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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 13.—Original.

THE STATE OF GEORGIA, COMPLAINANT,

vs.

EDWIN M. STANTON, ULYSSES S. GRANT, AND JOHN POPE.

FILED APRIL 15, 1867.

Injunctions
denied &c.
May 11/67

April 27/67

~~Injunction~~
~~[illegible]~~ Bill
dismissed
May [illegible]/67

SUPREME COURT OF THE UNITED STATES.

No. 13.—Original.

THE STATE OF GEORGIA, COMPLAINANT,

VS.

EDWIN M. STANTON, ULYSSES S. GRANT, AND JOHN POPE.

The State of Georgia, complainant, *vs.* Edwin M. Stanton, Ulysses S. Grant, and John Pope, defendants.	In equity.

[L. S.] The President of the United States to Edwin M. Stanton, Ulysses S. Grant, and John Pope, greeting:

For certain causes offered before the Supreme Court of the United States, holding jurisdiction in equity, you are hereby commanded that, laying all other matters aside, and notwithstanding any excuse, you be and appear before the said Supreme Court, holding jurisdiction in equity, on the first Monday in December next, at the City of Washington, in the District of Columbia, being the present seat of the national government of the United States, to answer unto the bill of complaint of the State of Georgia, in the said court exhibited against you. Hereof you are not to fail at your peril.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, at the city of Washington, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninety-first.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Issued 16 April, 1867.

Bill.

1 United States of America:

To the honorable the justices of the Supreme Court of the United States:

The State of Georgia, one of the United States of America, brings this its bill of complaint, in equity, against Edwin M. Stanton, a citizen of the State of Ohio, Ulysses S. Grant, a citizen of the State of Illinois, and John Pope, a citizen of the State of Illinois. And thereupon your orator, this complainant, complains and respectfully shows:

That the said State of Georgia, having been originally peopled and organized as a colony of the kingdom of Great Britain, did, on the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, unite with twelve other colonies of the same kingdom in the declaration of the said colonies' independence and of their separate existence as States, and did, subsequently, unite with the said twelve other States in articles of confederation for the surer maintenance of that declaration; that, after a protracted conflict between the States so confederated and Great Britain, to wit, on the third day of September, in the year one thousand seven hundred and eighty-three, a treaty of peace was concluded between the said beligerents, which was subsequently, in due form, ratified, whereby his Britannic Majesty acknowledged the said States so confederated as aforesaid, each State being distinguished by its proper name, and among them this complainant, the State of Georgia, "to be free, sovereign, and independent States," and "relinquished all claims to the government, propriety, and territorial rights of the same, and every part thereof."

That, subsequently, the thirteen States which had thus achieved their independence, for the purpose of forming a more perfect Union, assembled in convention and adopted a Constitution, creating a federal government over them all, touching such matters of general concern as were by said Constitution delegated to it: which said Constitution was in due form ratified, so that it became binding upon all the said States and all the people of the said United States; and
2 that the government instituted in pursuance thereof has continued to this day. That in the year one thousand eight hundred and sixty-one, the State of Georgia, and certain other States, for causes by them at that time deemed sufficient, proposed and essayed to withdraw from the Union formed by the Constitution aforementioned, and, so far as the same could be effected by delegates chosen by and representing the last-mentioned States, severally in convention, did avowedly so withdraw themselves. The executive and legislative departments of the government of the United States, thereafter, and now, in fact, administered by the remaining States, denied the right of the said States which had so essayed to withdraw from the said Union, and which will be hereafter referred to as the seceding States, so to withdraw; and on this issue a civil war ensued.

That during the progress of such war, the Congress of the United States, by resolution, and the President thereof, by proclamation, repeatedly declared in substance that the Union formed by said Constitution was indissoluble by such action as the said seceding States had taken; that such seceding States were not then, nor by any action of their own could be removed or withdrawn from the said Union; that such war, so as aforesaid then progressing against them, was not waged by the government of the United States vindictively or for any purpose of conquest or subjugation, but solely to maintain the supre-

macy of the federal Constitution and laws, and to preserve the Union aforesaid by defeating and overcoming the aforesaid essay and attempt to withdraw from the same. That, whilst the announcement so emanating from the existing authorities of the United States, apparently made in good faith, and for the purpose of opening a door for reconciliation and the full restoration of the former relations between the said seceding States and the people thereof, and the government of the United States remained unrescinded, the said seceding States and all States and all persons whomsoever then and theretofore so engaged in armed resistance to the authority or laws of the United States, did, before the first day of June, in the year of our Lord one thousand eight hundred and sixty-five, lay down their arms and make, to all intents and purposes, a full and complete surrender of all their military forces and means of continuing any such resistance; and did, also, before the last-named day, make a perfect submission to the authorities of the United States, thereby establishing, as far as in their power, a condition of perfect peace and acquiescence in the authority of the constituted official departments and agents of the United
States. And this complainant further shows that, ever since
3 the last-named day, such peace, as last aforesaid, has remained
undisturbed and unbroken, and now still exists; and that perfect order and tranquillity in this respect, and entire obedience to the laws and government of the United States, and of the local or State authorities, have existed and still exist throughout the said lately seceding States, including the said State of Georgia, in as full and perfect a manner as the same ever did exist in any of the said seceding States at any time prior to their said attempt, and as they do now exist, or ever did exist, in any other of the United States of America.

And this complainant further shows, that the Congress of the United States being then in recess, the President of the United States, deeming it expedient that all laws of the said lately seceding States, respectively, which had in any way sustained or countenanced the said attempt should be annulled, and that the governments of such States should not longer be administered by executive officers who had been engaged in the actual prosecution of such war as last aforesaid, suspended such State officers from their functions, appointing provisional governors in each of such lately seceding States, and amongst them in the State of Georgia; and, through the instrumentality of such provisional governors, did afford to the electoral body of and in each of such lately seceding States the opportunity, by their representatives in convention assembled, to readjust, in conformity with the Constitution and laws of the United States, the relations of such lately seceding States with the States from which such separation had been so attempted, and with the common government against which such resistance as last aforesaid had been so made.

And this complainant further shows, that by such a convention of the people of Georgia, fairly constituted under the auspices aforesaid, and acting voluntarily and freely, all prior constitutions, laws, provisions of law, ordinances, and legislative enactments in any manner or degree antagonistic to the authority of the United States, or to the government or laws thereof, or inconsistent with the perfect union of all the States of the United States of America under the Constitution of the United States, were abrogated and annulled.

That a new constitution for the said State of Georgia was adopted by such convention, declaring the Constitution, laws, and treaties of the United States to be the supreme law, providing for the State of Georgia a government strictly republican in form and in substance, agreeing in its general features with those of other States of the Union, and in all material respects identical with the State
4 constitutions under which the people of Georgia had lived in
the Union for more than seventy years—that is to say, during the whole period of said Georgia's existence as a State anterior to the said attempt to withdraw from such Union—save and except that thereby slavery was acknowledged to have been abolished, and was forever thereafter prohibited within said State.

And this complainant further shows, that afterwards and before the first day of January, one thousand eight hundred and sixty-six, the governor, or chief executive, and the legislative officers of the said State of Georgia, provided for in such new constitution to form and constitute those departments in the government of said State, were, as prescribed by the same constitution, and in the usual and accustomed manner, elected by the qualified voters of the said State, and did actually enter upon their respective offices and the performance of their respective official duties. That the judicial department of the said State of Georgia and the judges constituting the same in office at its adoption, were recognized and continued by said new constitution, due provision being therein made for filling vacancies then existing or thereafter to happen.

That since a period preceding the said first day of January, one thousand eight hundred and sixty-six, the government of the State of Georgia, in all its departments so created or recognized by and under the said new constitution, has been and still is in the full exercise of its functions, as the actual and lawful government of the State of Georgia, with the absolute consent and acquiescence of all the people of that State, and without doubt or question of its authority by any of the citizens or inhabitants of said State; that during all the time last aforesaid, the said several departments constituting the government of the said State of Georgia have acted in harmony and concert, each and every one of them, including the said judicial department, having uniformly at all times, and on numerous occasions in solemn forms, recognized the validity of the said last-mentioned constitution.

And this complainant further shows, that in the interval between the adoption of such new constitution and the next meeting of the Congress of the United States, members of the Congress for said State were duly elected or chosen, and the provisional governor released from duty, and the State government so organized and put in operation as aforesaid in Georgia fully recognized by the Executive of the United States, and that such State government has been continually so recognized to the present time.

That although the senators and representatives so elected
5 or chosen as last mentioned to the Congress of the United
States have been refused admission to their seats, the State government of Georgia, in its administration of the internal domestic polity and concerns of Georgia, has, during the entire term of the thirty-ninth Congress, been undisturbed; that during that time the State of Georgia has, in many important particulars, been treated by Congress and by the Executive government of the United States as a State of the Union, and now claims to be such State, and to be entitled to all the rights and privileges appertaining to that condition, as well in the federal relations of such State as in its local or State government; that since the adoption of such new constitution the government of the United States has extended its postal, revenue, and judicial systems over the State of Georgia as in former times and as now extended over other States; has collected from the people of Georgia direct taxes imposed by laws of Congress, theretofore enacted, on States, as States; has presented to the said legislature of Georgia for consideration and ratification, or rejection, amendments of the Constitution of the United States proposed by Congress since the surrender and submission aforesaid, and also to the legislatures of the other States now represented in Congress; that the ratification of some of those amendments by the legislature of Georgia has been accepted, while the rejection of others has been treated as an offence. And this complainant charges, and respectfully insists, that a State cannot be in the Union for certain purposes, and out of it for other purposes—in the Union for taxation, and out of it regarding representation—in the Union so far as its actions may subserve the furtherance of particular views and interests, and out of it when, in the exercise of an independent judgment, its acts of State fail to promote such views or interests—in the Union when it attempts to withdraw therefrom, and out of it when, in good faith, it relinquishes such attempt, and proposes full compliance with the federal Constitution and the laws enacted in pursuance thereof.

This complainant further shows that, being sincerely adverse to further strife, the State of Georgia had determined to forego the unquestionable right of its electors to representation in the Congress of the United States, and to participation by its duly chosen representatives in the administration of the federal government, until, by the prevalence of more just and liberal counsels, such right should be voluntarily conceded; provided that, as such State, Georgia could continue to enjoy, without molestation, its said corporate existence
as a State, with the privileges of self-government in matters
6 pertaining to domestic State polity not falling within the cog-
nizance of the federal authorities. But this complainant further shows that, near the termination of the thirty-ninth Congress, an act was, by the said Congress, passed and adopted, entitled "An act to provide for the more efficient government of the rebel States," in which the State of Georgia is expressly named and included as a State belonging to the class so denounced; that very soon after the organization of the fortieth Congress, which opened its session on the

same day that the said preceding Congress expired, a supplementary act was adopted by said fortieth Congress, entitled "An act supplementary of an act to provide for the more efficient government of the rebel States;" that each of the said acts was, in turn, when presented to his Excellency the President of the United States according to the requirements of the Constitution, vetoed by him for the reason by him assigned, that it violated the Constitution of the United States; that the Congress, in professed conformity to the course in that case prescribed by the Constitution of the United States, reconsidered and passed each of the aforesaid acts by the votes of two-thirds of the members of each House present and voting therein at the respective times of such reconsiderations; that, as complainant is informed and believes, his Excellency Andrew Johnson, President as aforesaid, notwithstanding his belief clearly and strongly expressed to Congress in his veto messages on the occasions in that behalf above mentioned that such acts are unconstitutional, deems it fit, under existing circumstances, to interpose no obstacle to the execution of such acts, and to withhold no official orders or action of the executive department that may be needed to carry them into full effect and operation.

And the said complainant further shows that, by the said new constitution of the State of Georgia, the whole constitutional and lawful authority of said State in and over all matters and subjects of State power or cognizance is to be exercised by certain elected officers of said State, and others by the said elected officers chosen for that purpose; and that by the provisions of such constitution the only persons competent or qualified to vote or participate in the election of said elected officers are the free white male citizens of said State of the age of twenty-one years or upwards, who possess certain minor qualifications as to local residence and the payment of taxes.

And this complainant further shows that by the same constitution no person is competent to hold any office in the said State of Georgia, or under its constitution or laws, who is not one of the said electoral class of citizens of said State; and this complainant
7 further shows, that as to the competency and qualifications of persons to vote for or participate in the election or appointment of officers and to hold office in the said State and under its laws, the constitution and constitutional or fundamental law of the said State of Georgia have been in precise conformity with the said provisions in that behalf of said new constitution as above stated, at all times since the existence of Georgia as one of the United States of America.

And the said complainant further shows, that the said State of Georgia now owns and possesses, and has in its control and possession, through the agency of its said State officers, sundry large amounts of real and personal estate, exceeding in value five millions of dollars, lawful money of the United States; that amongst its real estate are the following parcels of land—that is to say, the pareel of land in Milledgeville, in said State of Georgia, containing twenty acres and upwards, whereon is situated the building known as the State capitol, the value of which land and building is one hundred thousand dollars and upwards; and also that other parcel of land in Milledgeville aforesaid, containing two acres and upwards, whereon is situated the building known as the executive mansion, the value of which last-mentioned parcel of land and building is fifty thousand dollars and upwards, and also a great variety of other real estate situated in said State of Georgia, and of personal estate also in said State.

And this complainant further shows that at, and long previously to, the passage of the said act of the thirty-ninth Congress, there were, ever have been, and still are, in the said State of Georgia, many thousands of black men, of African descent, being inhabitants of the said State, above the age of twenty-one years, and in all respects qualified and competent, according to the terms of the said acts of Congress, to vote at any and every election assumed to be authorized or sanctioned by the said acts of Congress, or either of them; and that no one of such black men, nor any other black man ever was, nor now is, authorized by the constitution or laws of the said State of Georgia to vote at any election in said State, or otherwise to exercise or participate in any political power within said State, or under its constitution or laws.

And this complainant further shows that at, and previously to, the passage of the said act of the thirty-ninth Congress, there were, and at all times since there have been, and still are, in the said State of Georgia, many thousands of free white male citizens of said State of Georgia, inhabitants of the said State, above the age of twenty-one years, and in all respects competent and qualified to vote at
8 any and all elections for officers in said State under the con-
stitution and laws thereof, who, at all these times, were, and still are, good, true, and honest men, desirous of promoting the interests of their country, firmly and earnestly devoted to perpetuating the Union of the United States, faithful to the Constitution thereof, determined, to the best of their ability, to support the same, and of good name and fame, and never convicted or adjudged guilty in any court or tribunal of any offence whatever, who, nevertheless, could not truthfully take the oath or affirmation prescribed in the first section of the said act so passed by the said fortieth Congress, and who are, therefore, by the said act of Congress, precluded from registration in reference to any election authorized or sanctioned by the same acts, or either of them, and from voting at any such election.

And this complainant further shows that the intent and design of the said acts of Congress, and each of them, as manifestly appears by the terms thereof, are to cause to be set aside, annulled, and wholly abolished the said present existing State of Georgia, and to cause to be erected and substituted in its place and stead, within and upon the territory now held and occupied by the said State of Georgia, and the exclusively governing power in respect of all governmental or political authority within or concerning such territory, or concerning the property and persons therein, not delegated to the United States by the federal Constitution, another distinct and hitherto unknown State, to be called and designated the State of Georgia, representing and primarily created by a class of voters or electors other than and different from the class of voters and electors who, by the fundamental law and constitution of this complainant, the State of Georgia, have at all times hitherto possessed and exercised through their representatives, duly elected by themselves, the State government, in and over the territory aforesaid.

And the complainant further shows, that if the said acts are, or either of them is put in force or carried into execution, the immediate effect thereof must unavoidably be to consummate, effectuate, and fully accomplish such unlawful intent and design as aforesaid.

And, on information and belief, this complainant further shows that the President of the United States has given out and declared that he intends to put the said acts of Congress into full and complete operation, and to execute the same in the State of Georgia, as well as in the other of the said so-called rebel States; and has also given out and declared that he will so put the said acts in operation, and execute the same by means of his official directions in that behalf as such President, issued
9 through those official organs, officers, and agents of the executive department of the United States, which, according to the practice and usage of said executive department would be the most appropriate agencies in that behalf, if the said acts of Congress were valid and constitutional; and has also given out and declared, that in conformity with the tenor of the said acts of Congress he intends to, and will, from time to time, as occasion may seem to require, for the purpose last aforesaid, detail and furnish to each of the military officers assigned to command the respective districts in the said acts mentioned a sufficient military force to enable such officer to carry into complete execution the directions of the said acts.

And this complainant further shows, that putting the said acts of Congress into execution, as so threatened, would overthrow and destroy this complainant's corporate existence as a State of the Union aforesaid, by depriving the said State of Georgia of all the means and instrumentalities whereby such corporate existence might, and otherwise would be, maintained and upheld, and would deprive this complainant of its property, real and personal, aforesaid, and of all lawful or adequate power or means whereby to possess, control, enjoy, or protect said property, or any part thereof.

And this complainant further shows that, according to the usage and practice of the executive department, the Secretary of War, and Ulysses S. Grant, General of the army, are the most appropriate and the chief officers and agents of that department, and the officers through whom such official directions of the President as last aforesaid, if lawful, would be issued, and under whom such directions, if lawful, could be carried into execution and enforced.

And this complainant further shows that Edwin M. Stanton, a citizen of the State of Ohio, is the Secretary of War of the United States, and that Ulysses S. Grant, the said General of the army, is a citizen of the State of Illinois.

And, on information and belief derived from facts and circum-

stances, this complainant further shows that the said Secretary of War and the said General of the army have each indicated, and given it to be understood that he will issue, and cause to be fully executed, by means of all power under his official control, all such orders and directions as the President of the United States may desire or direct to be issued under or in pursuance of the said acts of Congress, or for the purpose of carrying the same acts into full execution and effect according to the tenor of the same. And this complainant verily believes that, unless restrained by the order of
10 this court in this behalf, the said Secretary of War and the
said General will so issue such orders, and cause such full execution as last aforesaid.

And, on information and belief, this complainant further shows that, on the eleventh day of March, one thousand eight hundred and sixty-seven, in pursuance of such, his declared intent, the President of the United States did cause to be issued by the said General, Ulysses S. Grant, from the headquarters of the army, at Washington, general order number ten, purporting to be for the information and government of all concerned, containing, first, a copy of the said act of the thirty-ninth Congress, and, secondly, an announcement that, in pursuance of the same act, the President had directed certain assignments, among which was the following: "The third district, consisting of the States of Georgia, Florida, and Alabama, to be commanded by Major General G. H. Thomas, headquarters Montgomery, Alabama."

And further, that thereafter, and in like pursuance of such intention, on the fifteenth day of the same month, March, the said President did cause to be issued from the said headquarters, by the said General Grant, another general order, numbered eighteen, whereby the following change in the aforesaid assignment to the said third district was made—that is to say, that Brevet Major General John Pope was assigned to command the third district, consisting of the States of Georgia, Florida, and Alabama.

And, on information and belief, this complainant shows that the said John Pope, who is a citizen of the State of Illinois, has accepted the said command, and has given out and declared that he intends to and will put in force and fully execute the said acts of Congress within the State of Georgia, as well as in the other parts of the said third district.

And this complainant apprehends and believes that the President of the United States and the said Ewin M. Stanton, Ulysses S. Grant, and John Pope, acting by and under the orders and directions of the President in that behalf, will put the said acts of Congress in force within the State of Georgia, and therein fully execute the same according to the intent and design of the said acts as above in this bill alleged, and with the effect, and producing the ruinous and destructive consequences to this complainant above in this complaint stated, unless the putting in force and execution of the said acts of Congress be restrained, enjoined, and prevented by this honorable court, as is herein prayed.

11 And this complainant further shows and insists that the said acts so respectively passed by the thirty-ninth and fortieth Congress of the United States were and are, and each of them, and each and every provision of each of them, was and is in tenor, object, intent, design, and purpose incompatible with, and repugnant to the Constitution of the United States, and utterly unlawful and void.

And this complainant further insists that neither the Congress or government of the United States has any right, power, or authority, by or under the Constitution of the United States, or otherwise howsoever, to declare or prescribe the qualifications of electors for elective or other officers of the said State of Georgia, or to hold or govern elections for such officers, or to constitute a State government in said State, or to annul, set aside, or disturb the said existing constitution or government thereof.

And this complainant further shows that, inasmuch as the President of the United States, though conscious of the unconstitutional, unlawful, unjust, and oppressive nature and design of said acts, does not think it fit in him, as the chief executive officer of the government, to abstain from executing the said acts whilst they remain unimpeached by any judicial court competent authoritively to advise him in the premises; and, inasmuch as, by consequence, in the absence of such judicial action, the whole physical power of the said executive department will be put in force against the said State of Georgia to compel its submission to the acts aforesaid, this complainant, the said State of Georgia, is wholly without adequate power of resistance, or any other protection in the premises—this complainant claims and insists that such protection can be and ought to be afforded by the order and decree of this honorable court in the premises, and by its preliminary order and injunction herein prayed for.

And this complainant further shows that there is no adequate remedy in the premises in any court of law, nor in any court of equity, save in this honorable court; and that the threatened injuries to this complainant, herein above mentioned, will be committed and perfected within the next five or six months, and will be perfected, consummated, and absolutely irreparable by any competent power or authority, to the entire destruction of the said State, its government, and proprietory rights aforesaid, unless the execution of the said acts of Congress be, as herein prayed for, restrained and prevented by the preliminary order and injunction of this honorable court and its decree in the premises.

In consideration of the premises, and inasmuch as the complainant
has no remedy at law, or any other effectual remedy whatever;
12 and to the end that, by the order and injunction of this honor-
able court, in due form issuing out of, and under the seal thereof, directed to the said Edwin M. Stanton, Ulysses S. Grant, and John Pope, the said last-named three persons, and every of them, may, until the further order of this court, be enjoined and restrained from issuing any order, or doing, or permitting any act or thing whatever within or concerning the State of Georgia, which is, or may be directed, or in terms or effect required of them, or any of

them, by or under the act of the thirty-ninth Congress, entitled "An act to provide for the more efficient government of the rebel States," or by or under the act of the fortieth Congress, entitled "An act supplemental to an act to provide for the more efficient government of the rebel States, passed March second, one thousand eight hundred and sixty-seven, and to facilitate restoration;" and that, by a like order and injunction, in like manner issuing and directed, the said last-named three persons may be enjoined and restrained from making or issuing any order, or doing anything for the purpose of making, or causing to be made, in or for the State of Georgia, or for any part thereof, any such registration as is mentioned in the act of the fortieth Congress, entitled "An act supplemental to an act to provide for the more efficient government of the rebel States, passed March second, one thousand eight hundred and sixty-seven, and to facilitate restoration," or for the purpose of administering or causing to be administered in the said State of Georgia any oath or affirmation prescribed in the last-mentioned act or for the purpose of holding or causing to be held in the said State of Georgia any such election or elections as in said last-mentioned act is or are prescribed or directed, or for the purpose of making or causing to to be made any return of any such election in or for the State of Georgia as in the said last-mentioned act is referred to, or for the purpose of ascertaining or causing to be ascertained the result of any such election, or for the purpose of holding or causing to be held in the said State of Georgia any such convention as in the last-mentioned act is directed or referred to; and that by the order and decree of this honorable court the said three persons last named may be perpetually retrained and enjoined in all the respects aforesaid, and that this complainant may have such further relief or such other relief, or both, in the premises as to this honorable court shall seem meet, and shall be agreeable to equity: May it please your honors to grant to this complainant the preliminary order and injunctions aforesaid, or the said one of them, and also the writ of subpœna issuing
out and under the seal of this honorable court, directed to the said
13 Edwin M. Stanton, Ulysses S. Grant, and John Pope, command-
ing them and every of them at a certain day, and under a certain penalty to be therein inserted, to be and appear before your honors in this honorable court, then and there to stand to, obey, abide, and perform such order and decree in the premises as to your honors shall seem meet, and shall be agreeable to equity.

And this complainant will ever pray, &c.

J. S. BLACK,
Solicitor for Complainant.

J. S. BLACK,
ROBERT J. BRENT,
EDGAR COWAN,
CH. O'CONOR,
Of Counsel.

District of Columbia, *ss:*

Charles J. Jenkins, being duly sworn, says that he is the governor of the State of Georgia, duly elected to that office according to the constitution and laws of the said State, and is now in the actual exercise of the functions of said office; and he further says that he has read the foregoing bill of complaint, and knows the contents thereof; and he further says that the said bill is true of his own personal knowledge, except as to the matters which are therein stated on information and belief; and, as to those matters, he believes it to be true.

CHARLES I. JENKINS.

Subscribed and sworn to before me, this 11th day of April, 1867, in open court.

D. W. MIDDLETON,
Cl'k Sup. Court U. S.

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corporations — forbidding elections — and declaring
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Supreme Court of the United States.

THE STATE OF GEORGIA
vs.
STANTON, GRANT, AND POPE.

The points given below have all been discussed, elaborately and ably, but it is thought advisable to restate them in a condensed form, for the convenience of the Attorney General and the Judges.

1. We admit that this Court has no authority to control the action of the legislative or executive departments, or to require either of them, by any direct mandate, to keep within the limits of the law. No matter how clear it may seem to the judges that an act of Congress has been passed which violates the Constitution, such an act does not of itself afford any ground of appeal to this Court.

2. We do not, therefore, complain that Congress has passed an unconstitutional act; but we complain that the defendants in this bill have done and threatened to do certain things injurious to the plaintiff. If the defendants have not done those things, and disclaim the intention imputed to them, we will have no case.

3. When a party to a cause justifies himself under an act of Congress or an executive order, it becomes necessary for the Court to pass upon the constitutional validity of the legislative act or upon the legal effect of the order in question; otherwise the Court cannot administer justice between the parties. In doing this, the Court is not exercising political power, but simply performing its own plain duty, which is entirely judicial.

4. That the decision of the Court upon a question so raised may sometimes have a great moral influence on the exercise of power by the political departments is most true.

But the parties in court are not to be denied their proper measure of justice merely because the incidental effect of a just decision may be to promote the cause of public freedom. John Hampden's right to a legal decision in his case was not, in the slightest degree, impaired by the fact that such a decision would have saved the liberties of England. This Court decided Milligan's case, although the order to discharge him involved a general declaration that federal officers could not hang their political opponents without a legal trial, and thus greatly curtailed a much-coveted power.

5. But, in order to give the court jurisdiction, there must be a real case between parties properly in the forum, and the question must arise in the regular course of the cause, so that the rights of the parties cannot be ascertained without deciding it.

6. In this case, the State of Georgia brings her bill setting forth certain wrongs done, or threatened to be done, against her by the defendants. The defendants avow their intention to do what is charged. But they assert their right to do it, because Congress has passed an act commanding it to be done. The reply is, that the act is wholly null and void, because it is unwarranted and forbidden by the Constitution. What kind of a decree is required for the purpose of doing legal justice to these parties depends upon the question whether the claim of the defendants to overturn the government of Georgia be legally well founded or not, and that again depends on the constitutional authority of Congress to pass the act which permits it. If, therefore, the Court shall decline to decide the point of constitutional law, it must be either because the State of Georgia is incapable of bringing a suit, or because her rights are in no danger of being violated by the defendants, or else because the rights which she asserts ought not to be protected by judicial authority.

7. But the State has an undoubted right to sue in her own

253

courts or in the federal courts. This is not denied, and needs no argument to support it. By the common law, every corporation, public or private, from the king downward, can bring a suit for a proper cause of action.

8. The defendants avow their intention to take the government of the State of Georgia entirely into their own hands, to nullify her laws, to control the election of her officers, to deprive her people of the right to be tried by their own courts and juries, to break up her whole social organization, to destroy her existence, and reduce her and all her people to a state of complete slavery. It is not possible to conceive how a greater wrong or a more grievous injury can be committed against any large body of persons. Nor is it pretended that these things are to be done in pursuance of any valid law. The Constitution makes Georgia a free State, and the act of Congress which requires her to be enslaved is an attempt to repeal the Constitution. The counsel for the defendants will admit that the act of Congress is unconstitutional; and, if that be true, it is of no more force than if the place it occupies on the statute-book were a blank. The defendants are, therefore, guilty of a great injury against Georgia, and are committing it without the show or color of legal excuse.

9. Has not the State, in her corporate capacity, a right to invoke judicial protection against such wrongs? She is the trustee of her people, who created this corporation, which they call a government, and placed it in the hands of their officers and electors, to be preserved and administered for their use. All the great interests of the society which lives under it are concerned in its perpetuation. As a trustee of the rights invaded, the State, surely, may take the necessary measures to save them from violation.

Shall this consist in forcible resistance? Certainly not; judicial tribunals are made for the very purpose of dispensing with force, and, therefore, the resort must be had to them. A private corporation may come into court and demand judicial protection for the rights placed under its guardianship. If Messrs. Pope, Grant, and Stanton would propose to seize the franchises of a railroad corporation by lawless force and run it themselves until the stockholders would consent to let the managers be elected, contrary to the charter, by a general vote of all the persons who live within ten miles of the line, this would, surely, be a case for injunction at the suit of the company. Are not the franchises of a public corporation of greater value than any that can be held by a mere trading company? When the King of England assailed the rights of the city of London, he admitted, and so did the most servile of his ministers, that the corporation had a right to defend itself in court. Its rights and its wrongs were, accordingly, made the subject of judicial investigation and decision. No one appeared in that case to say that the court was without jurisdiction because great political interests were hanging on the question.

If these propositions be true, the State of Georgia is a proper party in this Court, complaining of an attempted infraction of her rights. No defence has yet been suggested by the defendents' counsel, no denial of the facts, no assertion that they are justified by legal authority. Was an injunction ever denied in such a case?

The motion of the Attorney General to dismiss the case for want of jurisdiction cannot be sustained, unless our view be wholly wrong; and, if that motion be refused, we are entitled, upon the showing made, to a preliminary injunction.

J. S. BLACK,
For the State of Georgia.

Supreme Court of the United States.

IN EQUITY.

THE STATE OF GEORGIA,

vs.

EDWIN M. STANTON, ULYSSES S. GRANT, and JOHN POPE.

Brief for the Defendant, JOHN POPE.

LEWIS E. MILLS, of Counsel.

CINCINNATI:
J. R. MILLS & CO., PRINTERS AND STATIONERS, 117 WALNUT STREET.
1867.

Supreme Court of the United States.

IN EQUITY.

THE STATE OF GEORGIA,

vs.

EDWIN M. STANTON, ULYSSES S. GRANT, and JOHN POPE.

Brief for the Defendant, JOHN POPE.

The second point of the brief submitted by the learned counsel for the plaintiff, that the Court can award an injunction against an executive officer of the government, has been already considered by the learned Attorney General.

The third, concerning the "immunity of the President's person from the action of judicial process, and from any coercion or pressure by means of any official action whatever," needs no argument on the part of the defense.

The fourth, that this Court is bound to deliver such opinion as shall seem to it in accordance with the fundamental law, whether its decree be executed or not, would seem to be a proposition that needed scarcely to be stated, and not argued at length in five printed pages.

The fifth, that if Georgia is a member of the Union she may properly employ all constitutional means to preserve her existence as a body politic, is an equally clear proposition.

The sixth, that "the State of Georgia, *if in the Union*, is a competent suitor, as complainant," is not denied. Whether or not "the defendants fall within the description of persons properly suable by her in this Court," has already been fully discussed by the learned Attorney General. I will merely say that I cannot conceive what possible application cases concerning private corporations, cited by the learned counsel for the plaintiff, can have to the case at the bar.

The seventh objection, that "the grievance against which relief is sought is the destruction of a body politic, its corporate franchises, its corporate property, and its constitutionally guaranteed existence," has also been already met by the Attorney General. There is no destruction of the corporate body, or its franchises, property or existence sought. It is simply the purpose of the people of the United States to make a corporate body politic where none exists, and grant to it franchises and property that now belong to no recognized State Government.

And this involves the discussion of the eighth point of the complainants brief, that "the State of Georgia is a member of the Federal Union, and holds her place therein under the Constitution of the United States."

What are States?

We are accustomed to use the word State in speaking either of the territory included within certain arbitrary geographical lines, or of the people inhabiting that territory and exercising powers of local government. Thus we speak of "the people of a State." In the case before us, however, the people, with their local government, alone constitute the State referred to.

These States, or aggregations of people, are not sovereign. Thirteen of them were first independent Colonies; then sovereign States, united by a Federal compact; but finally the people of the States, assembled by their representatives, styling themselves the people of the United States, resigned, in a great measure, their attributes of sovereignty, and created a National Government, the constitution and laws of which became the supreme law of the land. It is true that the adoption of the Constitution was ratified by the States, as independent powers, but when it was adopted those independent powers existed no longer, and their inhabitants became *the people* of the United States.

A State then is but a component part, arbitrarily divided, of the people of the United States, and the National Government, while recognizing these divisions for wise purposes of convenience and good government, is in reality concerned only with the people who are subject to its own constitution and laws, although they may impose upon themselves other laws for their local security and protection.

The United States is a government of the people, not a government of States, and its laws are binding first upon the people, and then upon the persons or property which the people, in their corporate capacity, may have selected to supply public needs; and the State, so far as the government of the United States is concerned, is simply *the people* residing within the boundaries of the State.

Now the people inhabiting that portion of the territory of the Republic commonly called the State of Georgia, by means of their authorized agent—their local state government—entered into armed rebellion against the National Government, refused to obey its laws or acknowledge its authority, and strove to possess themselves of its property. The National Government resisted by means of its armies, raised in pursuance of the power vested in it by the Constitution, and there was civil war.

The National Government recognized the rebellious people as belligerents, and the laws of war necessarily followed in the footsteps of our armies.

Wherever the army went, the laws of war, usurping the authority of, and altogether overriding, all other law, became the law of the conquered land.

When the representative armies of the rebellious people surrendered, *the people* surrendered *en masse;* the military power of our Government became supreme over the conquered, and the laws of war became the sole laws of all the rebel territory.

Martial law cannot exist where civil law is in full force. The civil law may incroach on the dominions of martial law, but wherever the latter exists, it is supreme, and can, at any moment, drive the other out of existence.

In a word, then, the people had lost all their political rights, and *a fortiori* the States created by these people could not be possessed of them.

The restoration of these rights, therefore, must be sought from some other source, and that source can only be the National Government.

This is composed of three co-ordinate branches; the Executive, the Legislative, and the Judicial.

It is unnecessary to discuss the question whether the Judicial branch of the Government can bestow political rights.

Can the Executive? His powers are strictly defined in the Constitution. They are, to be Commander in Chief of the Army and Navy; to grant reprieves and pardons for offenses against the United States, except in cases of Impeachment; to make treaties and appoint ambassadors and other officers, by and with the advice of the Senate; and to fill vacancies in office.

These are all.

As Commander in Chief he may perhaps appoint Provisional Governors of the aggregates of people called States, and govern them by military law, when they have, by their own acts, placed themselves under the control of such law.

He may employ civil agents, who shall act in a military-civil capacity, if one may so call it, but nothing more can he do.

He may pardon the offences of persons against the United States, and thereby restore them to natural and civil rights, but he has no authority to re-invest them with political rights and privileges.

As Commander in Chief, and by virtue of no other authority, he did, as the bill states, (p. 3), "suspend State officers from their functions, appoint Provisional Governors in each of such lately seceding States, and amongst them in the State of Georgia; and, through the instrumentality of such Provisional Governors, did afford to the electoral body of and in each of such lately seceding States" authority to assemble in convention, revise their late constitutions, annul the acts of secession, repudiate their war debt and abolish slavery.

This they did; they held elections, selected officers, and framed all the machinery of a State Government, whereupon the President, still acting only by virtue of his authority as Commander in Chief, removed the Provisional Governors, and, so far as he could, mitigated the severities of the law, and pardoned many the crime they had committed.

There, however, his power ended. If he were an Emperor with absolute power he might go further and restore to them the political rights they had so wantonly cast to the winds, because the source of the rights, privileges and powers of the people would be in his own will. He is not the Government, however, but simply its executive officer, whom the government clothes with no such power.

If, then, the rebellious people cannot at their own option relieve themselves from the operation of the laws imposed upon them in consequence of of their own acts—and if they can the Republic is a failure and self government a cheat—and if neither the Judiciary of the Nation, nor its Executive can do so, the power, which must needs exist somewhere, must be vested in Congress, the representative of the people who create the government, who are the source of all political power, and who delegate their authority to act, to the Congress of the United States.

Congress, assembling, finds itself compelled to act concerning a state of affairs altogether without precedent. The people inhabiting the rebellious States, conquered and nominally at peace, but still living under martial law, though in its mildest form, with local and civil rights and privileges, but not political, ask to have these also restored, to be admitted into political fellowship, and to be clothed again with their lost rights of citizens of the National Government.

Congress, in its representative character, is a belligerent that by means of its armies has conquered its opposing belligerent. How far it shall push its advantages, is a matter that must rest entirely within its own discretion.

Martial law, though mitigated, has never been abolished, and Congress, after due deliberation, passes the acts complained of, not to establish, nor to perpetuate, nor to continue, but to provide a conditional limit for the continuance of such law, and for the restoration of the people to the enjoyment of all political privileges.

If the opinions I have expressed be well founded, and my argument be sound, the argument of the bill, (p. 5), that the States have been recognized as States by the Executive and by Congress, and are now wrongfully, and for the advancement of the interests of the dominant political party, considered as "in the Union for certain purposes, and out of it for other purposes—in the Union for taxation, and out of it for representation—in the Union so far as its actions may subserve the furtherance of particular views and interests, and out of it, when, in the exercise of an independent judgment, its acts of State fail to promote such views or interests—in the Union when it attempts to withdraw therefrom, and out of it when, in good faith it relinquishes such attempt and proposes full compliance with the Federal constitution and the laws enacted in pursuance thereof," is as unsound as it is unfair.

The people of the rebellious States have lost their political rights, and although the general Government grants them the postal service and other favors, it is its duty to govern them also, and both the time and the manner of their admission to their former high rank of States of the Union, lie altogether within its discretion, and are to be fixed by its houses of Congress.

Congress then, acting in its capacity as representative of the people, has enacted laws providing a way in which the rebellious people, whose political rights have been voluntarily renounced, may regain those rights, and again become members of the great national body.

Can the Supreme Court declare these laws unconstitutional, and therefore null and void?

If Congress does not by this law assume other powers than are vested in it by the Constitution, this Court cannot interfere.

The law does not prescribe Military Government. It only prescribes methods in which the power of the President as Commander in Chief shall be exercised, just as it enacts rules and regulations for the army, which he is bound to carry out.

In this view of the case Congress takes nothing from the States, nor limits the power they have at present, but, having to deal with a population who have voluntarily submitted themselves to military rule, from which they have never been constitutionally relieved, prescribes rules and regulations, according to which the army, which is merely the mailed representative of the people, shall govern them, and endeavor to lead them by mild measures, and by easy paths, back to peace and political brotherhood.

While this war was in progress could this Court enjoin the army from acts causing death, devastation, ruin of property or any act cruel in itself, but recognized and approved by the common opinion of the civilized world as necessary, and in the end salutary? And now, while the laws of war prevail, has this Court more power?

It is useless, therefore, to say that because Congress has, in these and other acts, styled Georgia and her rebellious sisters *States*, they are therefore *recognized as States in the Union.* As well might we conclude that because the learned counsel who opened the case for the complainant, frequently, in the course of his argument, called the acts in question "laws," he thereby signified his opinion that they were valid and constitutional enactments.

The *ninth point* of the complainant's brief is, that "the Military Reconstruction Acts are unconstitutional." If the course of reasoning I have pursued be the true one, and my conclusions be just, the acts were passed by Congress by virtue of the war power confided to that body by the Constitution, and, being for the purpose of controlling and carrying out the requirements of the martial law already existing, are not unconstitutional, but come within the scope of the powers vested in that body by the Constitution—being military, not civil acts.

On pages 32 and 33 of the brief submitted by the complainant's counsel, a dreadful picture is drawn of Congress deciding that the governments of New York, Pennsylvania or Massachusetts were monarchical, and therefore "directing the military forces to expel their officers, and in some form prescribed by Congress to create a new State government." Furthermore we are asked this question: "If it be true that Congress may, at its will, and in the face of a Presidential veto,"—(as if it were an act of great presumption, and almost a crime, to pass a law over the veto in the manner prescribed by the Constitution,)—" declare that there is no government in New York, Pennsylvania, or Ohio, set aside all existing authority, preclude from the ballot all the present electors, admit to it none but the single females above the age of 35, the Negroes, the Indians, the unnaturalized foreigners who cannot speak English, the habitual drunkards, or the felons convict, and create, on this basis, by its own returning officers, a new State, what shall we think of our Constitution? Where is the boasted wisdom of the Fathers?" In the words of the immortal Bunsby I reply, "If so, why not, &c.?"

I admit that in such case few of us would think much of our Constitution, and that we should be puzzled to discover the boasted wisdom of our Fathers, as exhibited therein.

But before Congress proceeds to such extreme measures with Pennsylvania, New York, or Ohio —before that body imposes such terrible penalties upon them—nay, if I must speak seriously of such a supposition, before any comparison whatever can be instituted between them and the so-called State of Georgia, their people must break every bond of national allegiance; must conspire together to ruin the nation they have sworn to support; must put forth every effort and strain every nerve to weaken its power and destroy its resources; must deluge its land with blood and convert its broad acres into cemeteries; must furnish a man who, having declared that the National Government was good, and that there was no cause for war, shall be willing to accept the second office of their confederacy, and support the rebellion he had just before denounced; must, in fine, tarnish their fair fame and barter honor for the purposes of ambition.

When the people of those great States shall have done such deeds, it will be time enough to ask such questions.

Again:

Accepting the fact that the inhabitants of Georgia are conquered people, her counsel urge that as Congress once passed a resolution that the war was not waged vindictively, nor for any purpose of conquest or subjugation, but for the restoration of the Union, which resolution had not been withdrawn when the armies of the Southern Confederacy surrendered, that the belligerent Nation had, in some manner, pledged itself to the belligerent southern people, that if the latter should be conquered, their rights existing before the rebellion should remain intact, and that this pledge was made to "the people of the North, to the unionists of the South, to the nations of the earth and to the general society of mankind,"—in fact, to "all the world and the rest of mankind."

If such a sunbeam can be extracted from the cucumber, I am unable to see its light or feel its warmth.

If this resolution was to be regarded as an offer extended, it is sufficient to say that it was never accepted.

Lastly, it is claimed in the first point of the said brief, that the acts complained of are not such political acts in their nature, as this Court will refuse to pass upon.

What is the law complained of?

Is it an act affecting contracts or the rights or property of States?

This is a suit against individuals, with whom the State has no contracts, and I may add that if it had any with the National Government. these have been annulled by its own acts.

If the rebellious States are as I have hereinbefore contended. they have no property—it has all passed into the possession of the National Government. I do not refer to individual property, but to that belonging formerly to those States before the rebellion.

When individual property or rights are attacked it will be time enough to bring a case before the Court to decide.

This is a political law, providing for the government of certain people, who, having relinquished their political rights according to the judgment of the whole people, as expressed by their representatives in Congress, by their President and by their highest Court of judicature, now ask to have them restored by this Court.

The Courts hold their sessions in the Southern States, and are open to all. No right that individuals possess is curtailed or affected by this law. If it be, let redress be sought in the ordinary manner.

This law is one for the good of the Republic, as well for that of the people of the Northern, as of those of the rebellious States. It is intended to restore peace and harmony to the country, and establish the national house upon such firm foundations that though the winds may blow, and the floods come, and the storms beat upon it, it shall not fall.

Let him who seeks equity, do equity, and let them who ask the interposition of this high Court show from their past acts that they are worthy of it.

L. E. MILLS,

April, 30, 1867. *of Counsel.*

2/5

Supreme Court of the United States.

IN EQUITY.

THE STATE OF GEORGIA
VS.
EDWIN M. STANTON, ULYSSES S. GRANT,
AND JOHN POPE.

MILITARY RECONSTRUCTION ACT.

VETO THEREOF.

SUPPLEMENTAL RECONSTRUCTION ACT.

VETO THEREOF.

TENURE OF OFFICE ACT.

VETO THEREOF.

WASHINGTON:
INTELLIGENCER PRINTING HOUSE,
401 and 403 D Street, near 7th.
1867.

[Public—No. 68.]

AN ACT to provide for the more efficient government of the rebel States.

Whereas no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said rebel States shall be divided into military districts, and made subject to the military authority of the United States as hereinafter prescribed, and for that purpose, Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama, and Florida the third district; Mississippi and Arkansas the fourth district; and Louisiana and Texas the fifth district.

Sec. 2. *And be it further enacted*, That it shall be the duty of the President to assign to the command of each of said districts an officer of the army, not below the rank brigadier-general, and to detail a sufficient military force to enable such officer to perform his duties and enforce his authority within the district to which he is assigned.

Sec. 3. *And be it further enacted*, That it shall be the duty of each officer assigned as aforesaid to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals, and to this end he may allow local civil tribunals to take jurisdiction of and to try offenders, or, when in his judgment it may be necessary for the trial of offenders, he shall have power to organize military commissions or tribunals for that purpose, and all interference under color of State authority with the exercise of military authority under this act, shall be null and void.

Sec. 4. *And be it further enacted*, That all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be inflicted, and no sentence of any military commission or tribunal hereby authorized, affecting the life or liberty of any person, shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the army shall not be effected by this act, except in so far as they conflict with its provisions: *Provided*, That no sentence of death under the provisions of this act shall be carried into effect without the approval of the President.

Sec. 5. *And be it further enacted*, That when the people of any one of said rebel States shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said State twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion, or for felony at common law, and when such Constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates, and when such Constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such Constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said State, by a vote of its legislature elected under said Constitution, shall have adopted the amendment to the Constitution of the United States, proposed by the Thirty-ninth Congress, and known as article fourteen, and when said article shall have become a part of the Constitution of the United States, said State shall be declared entitled to representation in Congress, and Senators and Representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter the preceding sections of this act shall be inoperative in said State: *Provided*, That no person excluded from the privilege of holding office by said proposed amendment to the Constitution of the United States, shall be eligible to election as a member of the convention to frame a constitution for any of said rebel States, nor shall any such person vote for members of such convention.

Sec. 6. *And be it further enacted*, That, until the people of the said rebel States shall be by law admitted to representation in the Congress of the United States, any civil government which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional governments all persons shall be entitled to vote, and none others, who are entitled to vote under the provisions of the fifth section of this act; and no person shall be eligible to any office under any such provisional governments who would be disqualified from holding office under the provisions of the third article of said constitutional amendment.

SCHUYLER COLFAX,
Speaker of the House of Representatives.

LA FAYETTE S. FOSTER,
President of the Senate, pro tempore.

In the House of Representatives,
March 2d, 1867.

The President of the United States having returned to the House of Representatives, in which it originated, the bill entitled "An act to provide for the more efficient government of the rebel States," with his objections thereto, the House of Representatives proceeded, in pursuance of the Constitution, to reconsider the same; and

Resolved, That the said bill do pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

EDWD. McPHERSON,
Clerk H. R. U. S.

IN SENATE OF THE UNITED STATES,
March 2d, 1867.

The Senate having proceeded, in pursuance of the Constitution, to reconsider the bill entitled "An act to provide for the more efficient government of the rebel States," returned to the House of Representatives by the President of the United States, with his objections, and sent by the House of Representatives to the Senate, with the message of the President returning the bill:

Resolved, That the bill do pass, two-thirds of the Senate agreeing to pass the same.

Attest:

J. W. FORNEY,
Secretary of the Senate.

VETO MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES.

To the House of Representatives:

I have examined the bill "to provide for the more efficient government of the Rebel States" with the care and anxiety which its transcendent importance is calculated to awaken. I am unable to give it my assent for reasons so grave that I hope a statement of them may have some influence on the minds of the patriotic and enlightened men with whom the decision must ultimately rest.

The bill places all the people of the ten States therein named under the absolute domination of military rulers; and the preamble undertakes to give the reason upon which the measure is based, and the ground upon which it is justified. It declares that there exist in those States no legal governments, and no adequate protection for life or property, and asserts the necessity of enforcing peace and good order within their limits. Is this true as a matter of fact?

It is not denied that the States in question have each of them an actual government, with all the powers, executive, judicial and legislative, which properly belong to a free State. They are organized like the other States of the Union, and, like them, they make, administer, and execute the laws which concern their domestic affairs. An existing *de facto* government, exercising such functions as these, is itself the law of the State upon all matters within its jurisdiction. To pronounce the supreme law-making power of an established State illegal, is to say that law itself is unlawful.

The provisions which these governments have made for the preservation of order, the suppression of crime, and the redress of private injuries, are in substance and principle the same as those which prevail in the Northern States, and in other civilized countries. They certainly have not succeeded in preventing the commission of all crime, nor has this been accomplished anywhere in the world. There, as well as elsewhere, offenders sometimes escape for want of vigorous prosecution, and occasionally, perhaps, by the inefficiency of courts or the prejudice of jurors. It is undoubtedly true that these evils have been much increased and aggravated, North and South, by the demoralizing influences of civil war, and by the rancorous passions which the contest has engendered. But that these people are maintaining local governments for themselves which habitually defeat the object of all government, and render their own lives and property insecure, is in itself utterly improbable, and the averment of the bill to that effect is not supported by any evidence which has come to my knowledge. All the information I have on the subject convinces me that the masses of the Southern people, and those who control their public acts, while they entertain diverse opinions on questions of Federal policy, are completely united in the effort to reorganize their society on the basis of peace, and to restore their mutual prosperity as rapidly and as completely as their circumstances will permit.

The bill, however, would seem to show upon its face, that the establishment of peace and good order is not its real object. The fifth section declares that the preceding sections shall cease to operate in any State where certain events shall have happened. These events are, first, the selection of delegates to a State convention by an election at which negroes shall be allowed to vote; second, the formation of a State Constitution by the convention so chosen; third, the insertion into the State constitution of a provision which will secure the right of voting at all elections to negroes, and to such white men as may not be disfranchised for rebellion or felony; fourth, the submission of the constitution for ratification to negroes and white men not disfranchised, and its actual ratification by their vote; fifth, the submission of the State constitution to Congress for examination and approval, and the actual approval of it by that body; sixth, the adoption of a certain amendment to the Federal Constitution by a vote of the Legislature elected under the new constitution; seventh, the adoption of said amendment by a sufficient number of other States to make it a part of the Constitution of the United States. All these conditions must be fulfilled before the people of any of these States can be relieved from the bondage of military domination; but when they are fulfilled, then immediately the pains and penalties of the bill are to cease, no matter whether there be peace and order or not, and without any reference to the security of life or property. The excuse given for the bill in the preamble is admitted by the bill itself not to be real. The military rule which it establishes is plainly to be used, not for any purpose of order or for the prevention of crime, but solely as a means of coercing the people into the adoption of principles and measures to which it is known that they are opposed, and upon which they have an undeniable right to exercise their own judgment.

I submit to Congress whether this measure is not, in its whole character, scope, and object, without precedent and without authority, in palpable conflict with the plainest provisions of the Constitution, and utterly destructive to those great principles of liberty and humanity for which our ancestors on both sides of the Atlantic have shed so much blood and expended so much treasure.

The ten States named in the bill are divided into five districts. For each district an officer of the army, not below the rank of brigadier-general, is to be appointed to rule over the people; and he is to be supported with an efficient military force to enable him to perform his duties and enforce his authority. Those duties and that authority, as defined by the third section of the bill, are, "to protect all persons in their rights of person and property, to suppress insurrection, disorder and violence, and to punish or cause to be punished all disturbers of the public peace or criminals." The power thus given to the commanding officer over all the people of each district is that of an absolute monarch. His mere will is to take the place of all law. The law of the States is now the only rule applicable to the subjects placed under his control, and that is completely displaced by the clause which declares all interference of State authority to be null and void. He alone is permitted to determine what are rights of person or property, and he may protect them in such way as in his discretion may seem proper. It places at his free disposal all the lands and goods in his district, and he may distribute them without let or hindrance to whom he pleases. Being bound by no State law, and there being no other law to regulate the subject, he may make a criminal code of his own; and he can make it as bloody as any recorded in history, or he can reserve the privilege of acting upon the impulse of his private passions in each case that arises. He is bound by no rules of evidence; there is, indeed, no provision by which he is authorized or required to take any evidence at all. Everything is a crime which he chooses to call so, and all persons are condemned whom he pronounces to be guilty. He is not bound to keep any record, or make any report of his proceedings. He may arrest his victims wherever he finds them, without warrant, accusation, or proof of probable cause. If he gives them a trial before he inflicts the punishment he gives it of his grace and mercy, not because he is commanded so to do.

To a casual reader of the bill, it might seem that some kind of trial was secured by it to persons accused of crime; but such is not the case. The officer "may allow local civil tribunals to try offenders," but of course this does not require that he shall do so. If any State or Federal Court presumes to exercise its legal jurisdiction by the trial of a malefactor without his special permission, he can break it up, and punish the judges and jurors as being themselves malefactors. He can save his friends from justice, and despoil his enemies, contrary to justice.

It is also provided, that "he shall have power to organize military commissions or tribunals;" but this power he is not commanded to exercise. It is merely permissive, and is to be used only "when in his judgment it may be necessary for the trial of offenders." Even if the sentence of a commission were made a prerequisite to the punishment of a party, it would be scarcely the slightest check upon the officer, who has authority to organize it as he pleases, prescribe its mode of proceeding, appoint its members from among his own subordinates, and revise all its decisions. Instead of mitigating the harshness of his single rule, such a tribunal would be used much more probably to divide the responsibility of making it more cruel and unjust.

Several provisions, dictated by the humanity of Congress, have been inserted in the bill, apparently to restrain the power of the commanding officer; but it seems to me that they are of no avail for that purpose. The fourth section provides: First. That trials shall not be unnecessarily delayed; but I think I have shown that the power is given to punish without trial, and if so, this provision is practically inoperative. Second. Cruel or unusual punishment is not to be inflicted; but who is to decide what is cruel and what is unusual? The words have acquired a legal meaning by long use in the courts. Can it be expected that military officers will understand or follow a rule expressed in language so purely technical, and not pertaining in the least degree to their profession? If not, then each officer may define cruelty according to his own temper, and if it is not usual, he will make it usual. Corporal punishment, imprisonment, the gag, the ball and chain, and the almost insupportable forms of torture invented for military punishment, lie within the range of choice. Third. The sentence of a commission is not to be executed without being approved by the commander, if it affects life or liberty, and a sentence of death must be approved by the President. This applies to cases in which there has been a trial and sentence. I take it to be clear, under this bill, that the military commander may condemn to death without even the form of a trial by a military commission, so that the life of the condemned may depend upon the will of two men, instead of one.

It is plain that the authority here given to the military officer amounts to absolute despotism. But, to make it still more unendurable, the bill provides that it may be delegated to as many subordinates as he chooses to appoint; for it declares that he shall "punish or cause to be punished." Such a power has not been wielded by any monarch in England for more than five hundred years. In all that time no people who speak the English language have borne such servitude. It reduces the whole population of the ten States--all persons, of every color, sex, and condition, and every stranger within their limits—to the most abject and degrading slavery. No master ever had a control so absolute over his slaves as this bill gives to the military officers over both white and colored persons.

It may be answered to this, that the officers of the army are too magnanimous, just, and humane to oppress and trample upon a subjugated people. I do not doubt that army officers are as well entitled to this kind of confidence as any other class of men. But the history of the world has been written in vain, if it does not teach us that unrestrained authority can never be safely trusted in human hands. It is almost sure to be more or less abused under any circumstances, and it has always resulted in gross tyranny where the rulers who exercise it are strangers to their subjects, and come among them as the representatives of a distant power, and more especially when the power that sends them is unfriendly. Governments closely resembling that here proposed have been fairly tried in Hungary and Poland, and the suffering endured by those people roused the sympathies of the entire world. It was tried in Ireland, and, though tempered at first by principles of English law, it gave birth to cruelties so atrocious that they are never recounted without just indignation. The French Convention armed its deputies with this power, and sent them to the southern departments of the Republic. The massacres, murders, and other atrocities which they committed show what the passions of the ablest men in the most civilized society will tempt them to do when wholly unrestrained by law.

The men of our race in every age have struggled to tie up the hands of their governments and keep them within the law; because their own experience of all mankind taught them that rulers could not be relied on to concede those rights which they were not legally bound to respect. The head of a great empire has sometimes governed it with a mild and paternal sway; but the kindness of an irresponsible deputy never yields what the law does not extort from him. Between such a master and the people subjected to his domination there can be nothing but enmity; he punishes them if they resist his authority; and if they submit to it, he hates them for their servility.

I come now to a question which is, if possible, still more important. Have we the power to establish and carry into execution a measure like this? I answer, certainly not, if we derive our authority from the Constitution, and if we are bound by the limitations which it imposes.

This proposition is perfectly clear: that no branch of the Federal Government—executive, legislative, or judicial—can have any just powers, except those which it derives through and exercises under the organic law of the Union. Outside of the Constitution, we have no legal authority more than private citizens, and within it we have only so much as that instrument gives us. This broad principle limits all our function, and applies to all subjects. It protects not only the citizens of States which are within the Union, but it shields every human being who comes or is brought under our jurisdiction. We have no right to do in one place more than in another that which the Constitution says we shall not do at all. If, therefore, the Southern States were in truth out of the Union, we could not treat their people in a way which the fundamental law forbids.

Some persons assume that the success of our arms in crushing the opposition that was made in some of the States to the execution of the Federal laws, reduced these

States and all their people—the innocent as well as the guilty—to the condition of vassalage, and gave us a power over them which the Constitution does not bestow, or define, or limit. No fallacy can be more transparent than this. Our victories subjected the insurgents to legal obedience, not to the yoke of an arbitrary despotism. When an absolute sovereign reduces his rebellious subjects, he may deal with them according to his pleasure, because he had that power before. But when a limited monarch puts down an insurrection, he must still govern according to law. If an insurrection should take place in one of our States against the authority of the State government, and end in the overthrowing of those who planned it, would that take away the rights of all the people of the counties where it was favored by a part or a majority of the population? Could they, for such a reason, be wholly outlawed and deprived of their representation in the legislature? I have always contended that the Government of the United States was sovereign within its constitutional sphere; that it executed its laws, like the States themselves, by applying its coercive power directly to individuals; and that it could put down insurrection with the same effect as a State, and no other. The opposite doctrine is the worst heresy of those who advocated secession, and cannot be agreed to without admitting that heresy to be right.

Invasion, insurrection, rebellion, and domestic violence were anticipated when the Government was framed, and the means of repelling and suppressing them were wisely provided for in the Constitution; but it was not thought necessary to declare that the States in which they might occur should be expelled from the Union. Rebellions, which were invariably suppressed, occurred prior to that out of which these questions grow; but the States continued to exist, and the Union remained unbroken. In Massachusetts, in Pennsylvania, in Rhode Island, and in New-York, at different periods in our history, violent and armed opposition to the United States was carried on; but the relations of those States to the Federal Government were not supposed to be interrupted or changed thereby, after the rebellious portions of their population were defeated and put down. It is true that in these earlier cases there was no formal expression of a determination to withdraw from the Union, but it is also true that in the Southern States the ordinances of secession were treated by all the friends of the Union as mere nullities, and are now acknowledged to be so by the States themselves. If we admit that they had any force or validity, or that they did in fact take the States in which they were passed out of the Union, we sweep from under our feet all the grounds upon which we stand in justifying the use of Federal force to maintain the integrity of the Government.

This is a bill passed by Congress in time of peace. There is not in any one of the States brought under its operation either war or insurrection. The laws of the States and of the Federal Government are all in undisturbed and harmonious operation. The Courts, State and Federal, are open, and in the full exercise of their proper authority. Over every State comprised in these five military districts, life, liberty, and property are secured by State laws and Federal laws, and the National Constitution is everywhere in force, and everywhere obeyed. What, then, is the ground on which this bill proceeds? The title of the bill announces that it is intended "for the more efficient government" of these ten States. It is recited by way of preamble that no legal State governments, "nor adequate protection for life or property," exist in those States, and that peace and good order should be thus enforced. The first thing which arrests attention upon these recitals, which prepare the way for martial law, is this—that the only foundation upon which martial law can exist under our form of government is not stated or so much as pretended. Actual war, foreign invasion, domestic insurrection—none of these appear, and none of these in fact exist. It is not even recited that any sort of war or insurrection is threatened. Let us pause here to consider, upon this question of Constitutional law and the power of Congress, a recent decision of the Supreme Court of the United States *ex parte* Milligan.

I will first quote from the opinion of the majority of the Court: "Martial law cannot arise from a threatened invasion. The necessity must be actual and present, the invasion real, such as effectually closes the courts and deposes the civil administration." We see that martial law comes in only when actual war closes the courts and deposes the civil authority; but this bill, in time of peace, makes martial law operate as though we were in actual war, and become the *cause*, instead of the *consequence* of the abrogation of civil authority. One more quotation: "It follows from what has been said on this subject that there are occasions when martial law can be properly applied. If in foreign invasion or civil war the courts are actually deposed, and it is impossible to administer criminal justice according to law, *then*, on the theatre of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthown, to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course."

I now quote from the opinion of the minority of the court, delivered by Chief Justice Chase: "We by no means assert that Congress can establish and apply the laws of war where no war has been declared or exists. Where peace exists the laws of peace must prevail." This is sufficiently explicit. Peace exists in all the territory to which this bill applies. It asserts a power in Congress, in time of peace, to set aside the laws of peace and to substitute the laws of war. The minority, concurring with the majority, declares that Congress does not possess that power. Again, and, if possible, more emphatically, the Chief Justice, with remarkable clearness and condensation, sums up the whole matter as follows:

"There are under the Constitution three kinds of military jurisdiction—one to be exercised both in peace and war; another to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within States or districts occupied by rebels treated as belligerents; and a third to be exercised in time of invasion or insurrection within the limits of the United States, or during rebellion within the limits of the States maintaining adhesion to the National Government, when the public danger requires its exercise. The first of these may be called jurisdiction under the Military Law, and is found in acts of Congress prescribing rules and articles of war, or otherwise providing for the government of the national force; the second may be distinguished as Military Government, superseding, as far as may be deemed expedient, the local law, and exercised by the military commander under the direction of the President, with the express or implied sanction of Congress; while the third may be denominated Martial Law Proper, and is called into action by Congress, or temporarily, when the action of Congress cannot be invited, and in the case of justifying or excusing peril, by the President, in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights."

It will be observed that of the three kinds of military jurisdiction which can be exercised or created under our Constitution, there is but one that can prevail in time of peace, and that is the code of laws enacted by Congress for the government of the national forces. That body of military law has no application to the citizen, nor even to the citizen soldier enrolled in the militia in time of peace. But this bill is not a part of that sort of military law, for that applies only to the soldier and not to the citizen, whilst, contrariwise, the military law provided by this bill applies only to the citizen and not to the soldier.

I need not say to the representatives of the American people that their Constitution forbids the exercise of judicial power in any way but one—that is, by the ordained and established courts. It is equally well known that in all criminal cases a trial by jury is made indispensable by the express words of that instrument. I will not enlarge on the inestimable value of the right thus secured to every freeman, or speak of the danger to public liberty in all parts of the country which must ensue from a denial of it anywhere or upon any pretence. A very recent decision of the Supreme Court has traced the history, vindicated the dignity, and made known the value of this great privilege so clearly that nothing more is needed. To what extent a violation of it might be excused in time of war or public danger may admit of discussion, but we are providing now for a time of profound peace, where there is not an armed soldier within our borders except those who are in the service of the Government. It is in such a condition of things that an act of Congress is proposed which, if carried out, would deny a trial by the lawful courts and juries to nine millions of American citizens, and to their posterity for an indefinite period. It seems to be scarcely possible that any one should seriously believe this consistent with a Constitution which declares, in simple, plain, and unambiguous language, that all persons shall have that right, and that no person shall ever in any case be deprived of it. The Constitution also forbids the arrest of the citizen without judicial warrant, founded on probable cause. This bill authorizes an arrest without warrant, at the pleasure of a military commander. The Constitution declares that "no person shall be held to answer for a capital or otherwise infamous crime unless on presentment by a grand jury." This bill holds every person not a soldier answerable for all crimes and all charges without any presentment. The Constitution declares that "no person shall be deprived of life, liberty, or property without due process of law." This bill sets aside all process of law, and makes the citizen answerable in his person and property to the will of one man, and as to his life to the will of two. Finally, the Constitution declares that "the privilege of the writ of habeas corpus shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it;" whereas this bill declares martial law (which of itself suspends this great writ) in time of peace, and authorizes the military to make the arrest, and gives to the prisoner only one privilege, and that is, a trial "without unnecessary delay." He has no hope of release from custody, except the hope, such as it is, of release by acquittal before a military commission.

The United States are bound to guarantee to each State a republican form of government. Can it be pretended that this obligation is not palpably broken if we carry out a measure like this, which wipes away every vestige of republican government in ten States, and puts the life, property, liberty, and honor of all the people in each of them under the domination of a single person clothed with unlimited authority?

The Parliament in England, exercising the omnipotent power which it claimed, was accustomed to pass bills of attainder; that is to say, it would convict men of treason and other crimes by legislative enactment. The person accused had a hearing, sometimes a patient and fair one; but generally party prejudice prevailed instead of justice. It often became necessary for Parliament to acknowledge its error and reverse its own action. The fathers of our country determined that no such thing should occur here. They withheld the power from Congress, and thus forbade its exercise by that body; and they provided in the Constitution that no State should pass any bill of attainder. It is therefore impossible for any person in this country to be constitutionally convicted or punished for any crime by a legislative proceeding of any sort. Nevertheless, here is a bill of attainder against nine millions of people at once. It is based upon an accusation so vague as to be scarcely intelligible, and found to be true upon no credible evidence. Not one of the nine millions was heard in his own defence. The representatives of the doomed parties were excluded from all participation in the trial. The conviction is to be followed by the most ignominious punishment ever inflicted on large masses of men. It disfranchises them by hundreds of thousands, and degrades them all—even those who are admitted to be guiltless—from the rank of freemen to the condition of slaves.

The purpose and object of the bill, the general intent which pervades it from begining to end, is to change the entire structure and character of the state governments, and to compel them by force to the adoption of organic laws and regulations which they are unwilling to accept if left to themselves. The negroes have not asked for the privilege of voting; the vast majority of them have no idea what it means. This bill not only thrusts it into their hands, but compels them, as well as the whites, to use it in a particular way. If they do not form a constitution with prescribed articles in it, and afterward elect a legislature which will act upon certain measures in a prescribed way, neither blacks nor whites can be relieved from the slavery which the bill imposes upon them. Without pausing here to consider the policy or impolicy of Africanizing the Southern part of our territory, I would simply ask the attention of Congress to that manifest, well-known, and universally acknowledged rule of constitutional law which declares that the Federal Government has no jurisdiction, authority, or power to regulate such subjects for any State. To force the right of suffrage out of the hands of the white people and into the hands of the negroes is an arbitrary violation of this principle.

This bill imposes martial law at once, and its operations will begin so soon as the General and his troops can be put in place. The dread alternative between its harsh rule and compliance with the terms of this measure is not suspended, nor are the people afforded any time for free deliberation. The bill says to them, take martial law first, *then* deliberate. And when they have done all that this measure requires them to do, other conditions and contingencies, over which they have no control, yet remain to be fullfilled before they can be relieved from martial law. Another Congress must first approve the constitutions made in conformity with the will of this Congress, and must declare these States entitled to representation in both Houses. The whole question thus remains open and unsettled, and must again occupy the attention of Congress, and in the mean time the agitation which now prevails will continue to disturb all portions of the people.

The bill also denies the legality of the governments of ten of the States which participated in the ratification of the amendment to the Federal Constitution abolishing slavery forever within the jurisdiction of the United States and practically excludes them from the Union. If this assumption of the bill be correct, their concurrence cannot be considered as having been legally given, and the important fact is made to appear that the consent of three-forths of the States—the requisite number—has not been constitutionally obtained to the ratification of that amendment, thus leaving the question of slavery where it stood before the amendment was officially declared to have become a part of the Constitution.

That the measure proposed by this bill does violate the Constitution in the particulars mentioned, and in many other ways which I forbear to enumerate, is too clear to admit of the least doubt. It only remains to consider whether the injunctions of that instrument ought to be obeyed or not. I think they ought to be obeyed, for reasons which I will proceed to give as briefly as possible.

In the first place, it is the only system of free government which we can hope to have as a nation. When it ceases to be the rule of our conduct, we may perhaps take our choice between complete anarchy, a consolidated despotism, and a total dissolution of the Union; but rational liberty, regulated by law, will have passed beyond our reach.

It is the best frame of government the world ever saw. No other is or can be so well adapted to the genius, habits, or wants of the American people. Combining the strength of a great empire with unspeakable blessings of local self-government--having a central power to defend the general interests, and recognizing the authority of the States as the guardians of industrial rights—it is "the sheet-anchor of our safety abroad and our peace at home." It was ordained "to form a more perfect union, establish justice, insure domestic tranquility, promote the general welfare, provide for the common defence, and secure the blessings of liberty to ourselves and our posterity." These great ends have been attained heretofore, and will be again, by faithful obedience to it, but they are certain to be lost if we treat with disregard its sacred obligations.

It was to punish the gross crime of defying the Constitution, and to vindicate its supreme authority, that we carried on a bloodly war of four years' duration. Shall we now acknowledge that we sacrificed a million of lives and expended billions of treasure to enforce a Constitution which is not worthy of respect and preservation?

Those who advocated the right of secession alleged in their own justification that we had no regard for law, and that their rights of property, life, and liberty would not be safe under the Constitution as administered by us. If we now verify their assertion, we prove that they were in truth and in fact fighting for their liberty, and instead of branding their leaders with the dishonoring name of traitors against a righteous and legal Government, we elevate them in history to the rank of self-sacrificing patriots, consecrate them to the admiration of the world, and place them by the side of Washington, Hampden, and Sydney. No, let us leave them to the infamy they deserve, punish them as they should be punished, according to law, and take upon ourselves no share of the odium which they should bear alone.

It is a part of our public history which can never be forgotten that both Houses of Congress, in July, 1861, declared in the form of a solemn resolution that the war was and should be carried on for no purpose of subjugation, but solely to enforce the Constitution and laws, and that when this was yielded by the parties in rebellion, the contest should cease, with the constitutional rights of the States and of individuals unimpaired. This resolution was adopted and sent forth to the world unanimously by the Senate, and with only two dissenting voices in the House. It was accepted by the friends of the Union in the South, as well as in the North, as expressing honestly and truly the object of the war. On the faith of it many thousands of persons in both sections gave their lives and their fortunes to the cause. To repudiate it now by refusing to the States and to the individuals within them the rights which the Constitution and laws of the Union would secure to them is a breach of our plighted honor for which I can imagine no excuse, and to which I cannot voluntarily become a party.

The evils which spring from the unsettled state of our Government will be acknowledged by all. Commercial intercourse is impeded, capital is in constant peril, public securities fluctuate in value, peace itself is not secure, and the sense of moral and political duty is impaired. To avert these calamities from our country, it is imperatively required that we should immediately decide upon some course of administration which can be steadfastly adhered to. I am thoroughly convinced that any settlement, or compromise, or plan of action which is inconsistent with the principles of the Constitution, will not only be unavailing, but mischievous; that it will but multiply the present evils instead of removing them. The Constitution, in its whole integrity and vigor, throughout the length and breadth of the land, is the best of all compromises. Besides, our duty does not, in my judgment, leave us a choice between that and any other. I believe that it contains the remedy that is so much needed, and that if the coördinate branches of the Government would unite upon its provisions, they would be found broad enough and strong enough to sustain in time of peace the nation which they bore safely through the ordeal of a protracted civil war. Among the most sacred guaranties of that instrument are those which declare that "each State shall have at least one Representative," and that "no State, without its consent, shall be deprived of its equal suffrage in the Senate." Each House is made the "judge of the elections, returns, and qualifications of its own members," and may, "with the concurrence of two-thirds, expel a member." Thus, as heretofore urged, "in the admission of Senators and Representatives from any and all of the States, there can be no just ground of apprehension that persons who are disloyal will be clothed with the powers of legislation, for this could not happen when the Constitution and laws are enforced by a vigilant and faithful Congress." "When a Senator or Representative presents his certificate of election, he may at once be admitted or rejected; or, should there be any question as to his eligibility, his credentials may be referred for investigation to the appropriate committee. If admitted to a seat, it must be upon evidence satisfactory to the House of which he thus becomes a member, that he possesses the requisite constitutional and legal qualifications. If refused admission as a member for want of due allegiance to the Government, and returned to his constituents, they are admonished that none but persons loyal to the United States will be allowed a voice in the legislative councils of the nation, and the political power and moral influence of Congress are thus effectively exerted in the interests of loyalty to the Government and fidelity to the Union." And is it not far better that the work of restoration should be accomplished by simple compliance with the plain requirements of the Constitution than by a recourse to measures which in effect destroy the States, and threaten the subversion of the General Government? All that is necessary to settle this simple but important question, without further agitation or delay, is a willingness on the part of all to sustain the Constitution and carry the provisions into practical operation. If to-morrow either branch of Congress would declare that, upon the presentation of their credentials, members constitutionally elected and loyal to the General Government would be admitted to seats in Congress, while all others would be excluded, and their places remain vacant until the selection by the people of loyal and qualified persons; and if, at the same time, assurance were given that this policy would be continued until all the States were represented in Congress, it would send a thrill of joy throughout the entire land, as indicating the inauguration of a system which must speedily bring tranquility to the public mind.

While we are legislating upon subjects which are of great importance to the whole people, and which must affect all parts of the country, not only during the life of the present generation, but for ages to come, we should remember that all men are entitled at least to a hearing in the councils which decide upon the destiny of themselves and their children. At present ten States are denied representation, and, when the Fortieth Congress assembles, on the fourth day of the present month, sixteen States will be without a voice in the House of Representatives. This grave fact, with the important questions before us, should induce us to pause in a course of legislation which, looking solely to the attainment of political ends, fails to consider the rights it transgresses, the law which it violates, or the institutions which it imperils.

ANDREW JOHNSON.

WASHINGTON, March 2, 1867.

[PUBLIC—No. 6.]

AN ACT supplementary to an act entitled "An act to provide for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, and to facilitate restoration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That before the first day of September, eighteen hundred and sixty-seven, the commanding general in each district defined by an act entitled "An act to provide for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, shall cause a registration to be made of the male citizens of the United States, twenty-one years of age and upwards, resident in each county or parish in the State or States included in his district, which registration shall include only those persons who are qualified to vote for delegates by the act aforesaid, and who shall have taken and subscribed the following oath or affirmation: "I, ———, do solemnly swear, (or affirm,) in the presence of Almighty God, that I am a citizen of the State of ———; that I have resided in said State for ——— months next preceding this day, and now reside in the county of ———, or the parish of ———, in said State, (as the case may be;) that I am twenty-one years old; that I have not been disfranchised for participation in any rebellion or civil war against the United States, nor for felony committed against the laws of any State or of the United States; that I have never been a member of any State legislature, nor held any executive or judicial office in any State and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, and afterwards engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, and afterwards engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof; that I will faithfully support the Constitution and obey the laws of the United States, and will, to the best of my ability, encourage others so to do, so help me God;" which oath or affirmation may be administered by any registering officer.

Sec. 2. *And be it further enacted*, That after the completion of the registration hereby provided for in any State, at such time and places therein as the commanding general shall appoint and direct, of which at least thirty days' public notice shall be given, an election shall be held of delegates to a convention for the purpose of establishing a constitution and civil government for such State loyal to the Union, said convention in each State, except Virginia, to consist of the same number of members as the most numerous branch of the State legislature of such State in the year eighteen hundred and sixty, to be apportioned among the several districts, counties, or parishes of such State by the commanding general, giving to each representation in the ratio of voters registered as aforesaid as nearly as may be. The convention in Virginia shall consist of the same number of members as represented the territory now constituting Virginia in the most numerous branch of the legislature of said State in the year eighteen hundred and sixty, to be apportioned as aforesaid.

Sec. 3. *And be it further enacted*, That at said election the registered voters of each State shall vote for or against a convention to form a constitution therefor under this act. Those voting in favor of such a convention shall have written or printed on the ballots by which they vote for delegates, as aforesaid, the words "For a convention," and those voting against such a convention shall have written or printed on such ballots the words "Against a convention." The persons appointed to superintend said election, and to make return of the votes given thereat, as herein provided, shall count and make return of the votes given for and against a convention; and the commanding general to whom the same shall have been returned shall ascertain and declare the total vote in each State for and against a convention. If a majority of the votes given on that question shall be for a convention, then such convention shall be held as hereinafter provided; but if a majority of said votes shall be against a convention, then no such convention shall be held under this act: *Provided*, That such convention shall not be held unless a majority of all such registered voters shall have voted on the question of holding such convention.

SEC. 4. *And be it further enacted*, That the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons, to make and complete the registration, superintend the election, and make return to him of the votes, list of voters, and of the persons elected as delegates by a plurality of the votes cast at said elections; and upon receiving said returns he shall open the same, ascertain the persons elected as delegates, according to the returns of the officers who conducted said election, and make proclamation thereof; and if a majority of the votes given on that question shall be for a convention, the commanding general, within sixty days from the date of election, shall notify the delegates to assemble in convention, at a time and place to be mentioned in the notification, and said convention, when organized, shall proceed to frame a constitution and civil government according to the provisions of this act, and the act to which it is supplementary; and when the same shall have been so framed, said constitution shall be submitted by the convention for ratification to the persons registered under the provisions of this act at an election to be conducted by the officers or persons appointed or

803

to be appointed by the commanding general, as hereinbefore provided, and to be held after the expiration of thirty days from the date of notice thereof, to be given by said convention; and the returns thereof shall be made to the commanding general of the district.

SEC. 5. *And be it further enacted*, That if, according to said returns, the constitution shall be ratified by a majority of the votes of the registered electors qualified as herein specified, cast at said election, at least one-half of all the registered voters voting upon the question of such ratification, the president of the convention shall transmit a copy of the same, duly certified, to the President of the United States, who shall forthwith transmit the same to Congress, if then in session, and if not in session, then immediately upon its next assembling; and if it shall moreover appear to Congress that the election was one at which all the registered and qualified electors in the State had an opportunity to vote freely and without restraint, fear, or the influence of fraud, and if the Congress shall be satisfied that such constitution meets the approval of a majority of all the qualified electors in the State, and if the said constitution shall be declared by Congress to be in conformity with the provisions of the act to which this is supplementary, and the other provisions of said act shall have been complied with, and the said constitution shall be approved by Congress, the State shall be declared entitled to representation, and senators and representatives shall be admitted therefrom as therein provided.

SEC. 6. *And be it further enacted*, That all elections in the States mentioned in the said "Act to provide for the more efficient government of the rebel States," shall, during the operation of said act, be by ballot; and all officers making the said registration of voters and conducting said elections shall, before entering upon the discharge of their duties, take and subscribe the oath prescribed by the act approved July second, eighteen hundred and sixty-two, entitled "An act to prescribe an oath of office:" *Provided*, That if any person shall knowingly and falsely take and subscribe any oath in this act prescribed, such person so offending and being thereof duly convicted shall be subject to the pains, penalties and disabilities which by law are provided for the punishment of the crime of wilful and corrupt perjury.

SEC. 7. *And be it further enacted*, That all expenses incurred by the several commanding generals, or by virtue of any orders issued, or appointments made, by them, under or by virtue of this act, shall be paid out of any moneys in the treasury not otherwise appropriated.

SEC. 8. *And be it further enacted*, That the convention for each State shall prescribe the fees, salary, and compensation to be paid to all delegates and other officers and agents herein authorized or necessary to carry into effect the purposes of this act not herein otherwise provided for, and shall provide for the levy and collection of such taxes on the property in such State as may be necessary to pay the same.

SEC. 9. *And be it further enacted*, That the word "article," in the sixth section of the act to which this is supplementary, shall be construed to mean "section."

SCHUYLER COLFAX,
Speaker of the House of Representatives.

B. F. WADE,
President of the Senate, pro tempore.

IN THE HOUSE OF REPRESENTATIVES, U. S.,
March 23d, 1867.

The President of the United States having returned to the House of Representatives, in which it originated, the bill entitled "An act supplementary to an act entitled 'An act to provide for the more efficient government of the rebel States,' passed March second, eighteen hundred and sixty-seven, and to facilitate restoration," with his objections thereto, the House of Representatives proceeded, in pursuance of the Constitution, to reconsider the same; and

Resolved, That the said bill do pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest: EDWD. McPHERSON,
Clerk H. R. U. S.

IN SENATE OF THE UNITED STATES,
March 23d, 1867.

The Senate having proceeded, in pursuance of the Constitution, to reconsider the bill entitled "An act supplementary to an act entitled 'An act to provide for the more efficient government of the rebel States,' passed March second, eighteen hundred and sixty-seven, and to facilitate restoration," returned to the House of Representatives by the President of the United States, with his objections, and sent by the House of Representatives to the Senate, with the message of the President returning the bill:

Resolved, That the bill do pass, two-thirds of the Senate agreeing to pass the same.

Attest: J. W. FORNEY,
Secretary.

Supplemental Reconstruction Bill.

VETO MESSAGE OF THE PRESIDENT.

The President on Saturday sent to the House of Representatives the following message:

To the House of Representatives:

I have considered the bill entitled "An act supplementary to an act entitled 'An act to provide for the more efficient government of the rebel States,' passed March, 2, 1867, and to facilitate restoration," and now return it to the House of Representatives with my objections.

This bill provides for elections in the ten States brought under the operation of the original act to which it is supplementary. Its details are principally directed to the elections for the formation of the State constitutions, but by the sixth section of the bill "all elections" in these States occurring while the original act remains in force are brought within its purview. Referring to the details, it will be found, first of all, there is to be a registration of the voters. No one whose name has not been admitted on the list is to be allowed to vote at any of these elections. To ascertain who is entitled to registration, reference is made necessary, by the express language of the supplement, to the original act and to the pending bill. The fifth section of the original act provides, as to voters, that they shall be "male citizens of the State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident of said State for one year." This is the general qualification, followed, however, by many exceptions. No one can be registered, according to the original act, "who may be disfranchised for participation in the rebellion," a provision which left undetermined the question as to what amounted to disfranchisement, and whether, without a judicial sentence, the act itself produced that effect. This supplemental bill superadds an oath, to be taken by every person before his name can be admitted upon the registration, that he has "not been disfranchised for participation in any rebellion or civil war against the United States." It thus imposes upon every person the necessity and responsibility of deciding for himself, under the peril of punishment by a military commission if he makes a mistake, what works disfranchisement by participation in rebellion, and what amounts to such participation. Almost every man—the negro as well as the white—above twenty-one years of age, who was resident in these ten States during the rebellion, voluntarily or involuntarily, at some time and in some way, did participate in resistance to the lawful authority of the General Government. The question with the citizen to whom this oath is to be proposed must be a fearful one; for while the bill does not declare that perjury may be assigned for such false swearing, nor fix any penalty for the offence, we must not forget that martial law prevails; that every person is answerable to a military commission, without previous presentment by a grand jury, for any charge that may be made against him; and that the supreme authority of the military commander determines the question as to what is an offence, and what is to be the measure of punishment.

The fourth section of the bill provides "that the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons." The only qualification stated for these officers is that they must be "loyal." They may be persons in the military service or civilians, residents of the State or strangers. Yet these persons are to exercise most important duties, and are vested with unlimited discretion. They are to decide what names shall be placed upon the register; and from their decision there is to be no appeal. They are to superintend the elections, and to decide all questions which may arise. They are to have the custody of the ballots, and to make returns of the persons elected. Whatever frauds or errors they may commit must pass without redress. All that is left for the commanding general is to receive the returns of the elections, open the same, and ascertain who are chosen "according to the returns of the officers who conducted said elections." By such means, and with this sort of agency, are the conventions of delegates to be constituted.

As the delegates are to speak for the people, common justice would seem to require that they should have authority from the people themselves. No convention so constituted will in any sense represent the wishes of the inhabitants of these States; for, under the all-embracing exceptions of these laws, by a construction which the uncertainty of the clause as to disfranchisement leaves open to the board of officers, the great body of the people may be excluded from the polls, and from all opportunity of expressing their own wishes, or voting for delegates who will faithfully reflect their sentiments.

I do not deem it necessary further to investigate the details of this bill. No consideration could induce me to give my approval to such an election law for any purpose, and especially for the great purpose of framing the constitution of a State. If ever the American citizen should be left to the free exercise of his own judgment, it is when he is engaged in the work of forming the fundamental law under which he is to live. That work is his work, and it cannot properly be taken out of his hands. All this legislation proceeds upon the contrary assumption, that the people of each of these States shall have no constitution, except such as may be arbitrarily dictated by Congress, and formed under the restraint of military rule. A plain statement of facts makes this evident.

In all these States there are existing constitutions, formed in the accustomed way by the people. Congress, however, declares that these constitutions are not "loyal and republican," and requires the people to form them anew. What, then, in the opinion of Congress, is necessary to make the constitution of a State "loyal and republican?" The original act answers the question. It is universal negro suffrage—a question which the Federal Constitution leaves to the States themselves. All this legislative machinery of martial law, military coercion, and political disfranchisement is avowedly for that purpose, and none other. The existing constitutions of the ten States conform to the acknowledged standards of loyalty and republicanism. Indeed, if there are degrees in republican forms of government, their constitutions are more republican now than when these States—four of which were members of the original thirteen—first became members of the Union.

Congress does not now demand that a single provision of their constitutions be changed, except such as confine suffrage to the white population. It is apparent, therefore, that these provisions do not conform to the standard of republicanism which Congress seeks to establish. That there may be no mistake, it is only necessary that reference should be made to the original act, which declares "such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates." What class of person is here meant clearly appears in the same section. That is to say, "the male citizens of said State twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election."

Without these provisions no constitution which can be framed in any one of the ten States will be of any avail with Congress. This, then, is the test of what the constitution of a State of this Union must contain to make it republican. Measured by such a standard, how few of the States now composing the Union have republican constitutions! If, in the exercise of the constitutional guaranty that Congress shall secure to every State a republican form of government, universal suffrage for blacks as well whites is a *sine qua non*, the work of re-construction may as well begin in Ohio as in Virginia, in Pennsylvania as in North Carolina.

When I contemplate the millions of our fellow-citizens of the South, with no alternative left but to impose upon themselves this fearful and untried experiment of complete negro enfranchisement, and white disfranchisement, it may be, almost as complete, or submit indefinitely to the rigor of martial law, without a single attribute of freemen, deprived of all the sacred guaranties of our Federal Constitution, and threatened with even worse wrongs, if any worse are possible, it seems to me that their condition is the most deplorable to which any people can be reduced. It is true that they have been engaged in rebellion, and that, their object being a separation of the States and a dissolution of the Union, there was an obligation resting upon every loyal citizen to treat them as enemies, and to wage war against their cause.

Inflexibly opposed to any movement imperiling the integrity of the Government, I did not hesitate to urge the adoption of all measures necessary for the suppression of the insurrection. After a long and terrible struggle the efforts of the Government were triumphantly successful, and the people of the South, submitting to the stern arbitrament, yielded for ever the issues of the contest. Hostilities terminated soon after it became my duty to assume the responsibilities of the Chief Executive Officer of the Republic, and I at once endeavored to repress and control the passions which our civil strife engendered, and no longer regarding these erring millions as enemies, again acknowledged them as our friends and our countrymen. The war had accomplished its objects. The nation was saved, and that seminal principle of mischief which, from the birth of the Government, had gradually but inevitably brought on the rebellion, was totally eradicated. Then, it seemed to me, was the auspicious time to commence the work of reconciliation; then, when the people sought once more our friendship and protection, I considered it our duty generously to meet them in the spirit of charity and forgiveness, and to conquer them even more effectually by the magnanimity of the nation than by the force of its arms. I yet believe that if the policy of reconciliation then inaugurated, and which contemplated an early restoration of these people to all their political rights, had received the support of Congress, every one of these ten States, and all their people, would at this moment be fast anchored in the Union, and the great work which gave the war all its sanction, and made it just and holy, would have been accomplished. Then, over all the vast and fruitful regions of the South, peace and its blessings would have prevailed, while now millions are deprived of rights guaranteed by the Constitution to every citizen, and, after nearly two years of legislation, find themselves placed under an absolute military despotism. "A military republic—a government formed on mock elections, and supported daily by the sword," was nearly a quarter of a century since pronounced by Daniel Webster, when speaking of the South American States, as a "movement indeed, but a retrograde and disastrous movement, from the regular and old-fashioned monarchical systems," and he added:

"If men would enjoy the blessings of republican government, they must govern themselves by reason, by mutual counsel and consultation, by a sense and feeling of general interest, and by the acquiescence of the minority in the will of the majority, properly expressed; and, above all, the military must be kept, according to the language of our bill of rights, in strict subordination to the civil authority. Wherever this lesson is not both learned and practised, there can be no political freedom. Absurd, preposterous is it, a scoff and a satire on free forms of constitutional liberty, for forms of government to be prescribed by military leaders, and the right of suffrage to be exercised at the point of the sword."

I confidently believe that a time will come when these States will again occupy their true positions in the Union. The barriers which now seem so obstinate must yield to the force of an enlightened and just public opinion, and sooner or later unconstitutional and oppressive legislation will be effaced from our statute-books. When this shall have been consummated, I pray God that the errors of the past may be forgotten, and that once more we shall be a happy, united, and prosperous people, and that at last, after the bitter and eventful experience through which the nation has passed, we shall all come to know that our only safety is in the preservation of our Federal Constitution, and in according to every American citizen and to every State the rights which that Constitution secures.

ANDREW JOHNSON.

WASHINGTON, March 23, 1867.

[Public—No. 69.]

AN ACT regulating the tenure of certain civil offices.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is, and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided: *Provided*, That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General shall hold their offices respectively for and during the term of the President by whom they may have been appointed and for one month thereafter, subject to removal by and with the advice and consent of the Senate.

Sec. 2. *And be it further enacted*, That when any officer appointed as aforesaid, excepting judges of the United States courts, shall, during a recess of the Senate, be shown by evidence satisfactory to the President, to be guilty of misconduct in office, or crime, or for any reason shall become incapable or legally disqualified to perform its duties, in such case, and in no other, the President may suspend such officer and designate some suitable person to perform temporarily the duties of such office until the next meeting of the Senate, and until the case shall be acted upon by the Senate, and such person so designated shall take the oaths and give the bonds required by law to be taken and given by the person duly appointed to fill such office; and in such case it shall be the duty of the President, within twenty days after the first day of such next meeting of the Senate, to report to the Senate such suspension, with the evidence and reasons for his action in the case and the name of the person so designated to perform the duties of such office. And if the

Senate shall concur in such suspension and advise and consent to the removal of such officer, they shall so certify to the President, who may thereupon remove such officer and, by and with the advice and consent of the Senate, appoint another person to such office. But if the Senate shall refuse to concur in such suspension, such officer so suspended shall forthwith resume the functions of his office, and the powers of the person so performing its duties in his stead shall cease, and the official salary and emoluments of such officer shall, during such suspension, belong to the person so performing the duties thereof, and not to the officer so suspended: *Provided, however*, That the President, in case he shall become satisfied that such suspension was made on insufficient grounds, shall be authorized, at any time before reporting such suspension to the Senate as above provided, to revoke such suspension and reinstate such officer in the performance of the duties of his office.

Sec. 3. *And be it further enacted*, That the President shall have power to fill all vacancies which may happen during the recess of the Senate, by reason of death or resignation, by granting commissions which shall expire at the end of their next session thereafter. And if no appointment, by and with the advice and consent of the Senate, shall be made to such office, so vacant or temporarily filled as aforesaid during such next session of the Senate, such office shall remain in abeyance, without any salary, fees, or emoluments attached thereto, until the same shall be filled by appointment thereto, by and with the advice and consent of the Senate; and during such time all the powers and duties belonging to such office shall be exercised by such other officer as may by law exercise such powers and duties in case of a vacancy in such office.

Sec. 4. *And be it further enacted*, That nothing in this act contained shall be construed to extend the term of any office the duration of which is limited by law.

Sec. 5. *And be it further enacted*, That if any person shall, contrary to the provisions of this act, accept any appointment to or employment in any office, or shall hold or exercise, or attempt to hold or exercise any such office or employment, he shall be deemed, and is hereby declared to be, guilty of a high misdemeanor, and, upon trial and conviction thereof, he shall be punished therefor by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding five years, or both said punishments, in the discretion of the court.

Sec. 6. *And be it further enacted*, That every removal, appointment, or employment, made, had, or exercised, contrary to the provisions of this act, and the making, signing, sealing, countersigning, or issuing of any commission or letter of authority for or in respect to any such appointment or employment, shall be deemed, and are hereby declared to be high misdemeanors, and upon trial and conviction thereof, every person guilty thereof shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding five years, or both said punishments, in the discretion of the court: *Provided*, That the President shall have power to make out and deliver, after the adjournment of the Senate, commissions for all officers whose appointment shall have been advised and consented to by the Senate.

Sec. 7. *And be it further enacted*, That it shall be the duty of the Secretary of the Senate, at the close of each session thereof, to deliver to the Secretary of the Treasury, and to each of his Assistants, and to each of the Auditors, to each of the Comptrollers in the Treasury, and to the Treasurer, and to the Register of the Treasury, a full and complete list, duly certified, of all the persons who shall have been nominated to and rejected by the Senate during such session, and a like list of all the offices to which nominations shall have been made and not confirmed and filled at such session.

Sec. 8. *And be it further enacted*, That whenever the President shall, without the advice and consent of the Senate, designate, authorize, or employ any person to perform the duties of any office, he shall forthwith notify the Secretary of the Treasury thereof; and it shall be the duty of the Secretary of the Treasury thereupon to communicate such notice to all the proper accounting and disbursing officers of his department.

Sec. 9. *And be it further enacted*, That no money shall be paid or received from the treasury, or paid or received from or retained out of any public moneys or funds of the United States, whether in the treasury or not, to or by or for the benefit of any person appointed to or authorized to act in or holding or exercising the duties or functions of any office contrary to the provisions of this act; nor shall any claim, account, voucher, order, certificate, warrant or other instrument providing for or relating to such payment, receipt, or retention, be presented, passed, allowed, approved, certified, or paid by any officer of the United States, or by any person exercising the functions or performing the duties of any office or place of trust under the United States, for or in respect to such office, or the exercising or performing the functions or duties thereof; and every person who shall violate any of the provisions of this section shall be deemed guilty of a high misdemeanor, and, upon trial and conviction thereof, shall be punished therefor by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding ten years, or both said punishments, in the discretion of the court.

SCUYLER COLFAX,
Speaker of the House of Representatives.

LA FAYETTE S. FOSTER,
President of the Senate, pro tempore.

IN THE SENATE OF THE UNITED STATES,
March 2, 1867.

The President of the United States having returned to the Senate, in which it originated, the bill entitled "An act regulating the tenure of certain civil offices," with his objections thereto, the Senate proceeded, in pursuance of the Constitution to reconsider the same; and

Resolved, That the said bill do pass, two-thirds of the Senate agreeing to pass the same.

Attest: J. W. FORNEY,
Secretary of the Senate.

In the House of Representatives, U. S.,
March 2d, 1867.

The House of Representatives having proceeded, in pursuance of the Constitution, to reconsider the bill entitled "An act regulating the tenure of certain civil offices," returned to the Senate by the President of the United States with his objections, and sent by the Senate to the House of Representatives, with the message of the President returning the bill—

Resolved, That the bill do pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest: EDWD. McPHERSON,
Clerk.

VETO MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES.

THE TENURE-OF-OFFICE BILL VETOED.

To the Senate of the United States:

I have carefully examined the bill to regulate the tenure of certain civil offices. The material portion of the bill is contained in the first section, and is of the effect following, namely: "That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been appointed by the President, with the advice and consent of the Senate, and duly qualified; and that the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster-General, and the Attorney-General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate."

These provisions are qualified by a reservation in the fourth section, "that nothing contained in the bill shall be construed to extend the term of any office the duration of which is limited by law." In effect, the bill provides that the President shall not remove from their places any of the civil officers whose terms of service are not limited by law, without the advice and consent of the Senate of the United States. The bill, in this respect, conflicts, in my judgment, with the Constitution of the United States. The question, as Congress is well aware, is by no means a new one. That the power of removal is constitutionally vested in the President of the United States is a principle which has been not more distinctly declared by judicial authority and judicial commentators than it has been uniformly practised upon by the legislative and executive departments of the Government. The question arose in the House of Representatives so early as the 16th day of June, 1789, on the bill for establishing an executive department, denominated "The Department of Foreign Affairs." The first clause of the bill, after recapitulating the functions of that officer, and defining his duties, had these words: "To be removable from office by the President of the United States." It was moved to strike out these words, and the motion was sustained with great ability and vigor. It was insisted that the President could not constitutionally exercise the power of removal exclusive of the Senate; that the Federalist so interpreted the Constitution when arguing for its adoption by the several States; that the Constitution had nowhere given the President power of removal, either expressly or by strong implication, but, on the contrary, had distinctly provided for removals from office by impeachment only. A construction which denied the power of removal by the President was further maintained by arguments drawn from the danger of the abuse of the power; from the supposed tendency of an exposure of public officers to capricious removal, to impair the efficiency of the civil service; from the alleged injustice and hardship of displacing incumbents, dependent upon their official stations, without sufficient consideration; from a supposed want of responsibility on the part of the President, and from an imagined defect of guaranties against a vicious President, who might incline to abuse the power. On the other hand, an exclusive power of removal by the President was defended as a true exposition of the text of the Constitution. It was maintained that there are certain causes for which persons ought to be removed from office without being guilty of treason, bribery, or malfeasance, and that the nature of things demands that it should be so. "Suppose," it was said, "a man becomes insane by the visitation of God, and is likely to ruin our affairs: are the hands of Government to be confined from warding off the evil? Suppose a person in office not possessing the talents he was judged to have at the time of the appointment, is the error not to be corrected? Suppose he acquire vicious habits and incurable indolence, or totally neglect the duties of his office, which shall work mischief to the public welfare, is there no way to arrest the threatened danger? Suppose he became odious and unpopular by reason of the measures he pursues, and this he may do without committing any positive offence against the law, must he preserve his office in despite of the popular will? Suppose him grasping for his own aggrandizement and the elevation of his connections by every means short of the treason defined by the Constitution, hurrying your affairs to the precipice of destruction, endangering your domestic tranquillity, plundering you of the means of defence, alienating the affections of your allies, and promoting the spirit of discord, must the tardy, tedious, desultory road, by way of impeachment, be traveled to overtake the man who, barely confining himself within the letter of the law, is employed in drawing off the vital principle of the Government? The nature of things, the great objects of society, the express objects of the Constitution itself, require that this thing should be otherwise. To unite the Senate with the President "in the exercise of the power," it was said, "would involve us" in the most serious difficulty. "Suppose a discovery of any of these events should take place when the Senate is not in session, how is the remedy to be applied? The evil could be avoided in no other way than by the Senate sitting always." In regard to the danger of the power being abused if exercised by one man, it was said "that the danger is as great with respect to the Senate, who are assembled from various parts of the continent, with different impressions and opinions;" that such a body is more likely to misuse the power of removal than the man whom the united voice of America calls to the Presidential chair. As the nature of Government requires the power of removal, it was maintained "that it should be exercised in this way by the hand capable of exerting itself with effect, and the power must be conferred on the President by the Constitution as the executive officer of the Government." Mr. Madison, whose adverse opinion in the Federalist had been relied upon by those who denied the exclusive power, now participated in the debate.

He declared that he had reviewed his former opinions, and he summed up the whole case as follows:

"The Constitution affirms that the executive power is vested in the President. Are there exceptions to this proposition? Yes, there are. The Constitution says, that in appointing to office the Senate shall be associated with the President, unless in the case of inferior officers, when the law shall otherwise direct. Have we (that is, Congress) a right to extend this exception? I believe not. If the Constitution has invested all executive power in the President, I return to assert that the Legislature has no right to diminish or modify his executive authority. The question now resolves itself into this: Is the power of displacing an executive power? I conceive that if any power whatever is in the Executive, it is in the power of appointing, overseeing, and controlling those who execute the laws. If the Constitution had not qualified the power of the President in appointing to office by associating the Senate with him in that business, would it not be clear that he would have the right by virtue of his executive power to make such appointment? Should we be authorized, in defiance of that clause in the Constitution—'the executive power shall be vested in the President'—to unite the Senate with the President in the appointment to office? I conceive not. If it is admitted that we should not be authorized to do this, I think it may be disputed whether we have a right to associate them in removing persons from office, the one power being as much of an executive nature as the other; and the first is authorized by being excepted out of the general rule established by the Constitution in these words: 'The executive power shall be vested in the President.'"

The question thus ably and exhaustively argued was decided by the House of Representatives, by a vote of thirty-four to twenty, in favor of the principle that the executive power of removal is vested by the Constitution in the Executive, and in the Senate by the casting vote of the Vice-President, the question has often been raised in subsequent times of high excitement, and the practice of the Government has nevertheless conformed in all cases to the decision thus early made.

The question was revived during the administration of President Jackson, who made, as is well recollected, a very large number of removals, which were made an occasion of close and rigorous scrutiny and remonstrance. The subject was long and earnestly debated in the Senate, and the early construction of the Constitution was nevertheless freely accepted as binding and conclusive upon Congress.

The question came before the Supreme Court of the United States in January, 1839, *ex parte* Herren. It was declared by the court on that occasion that the power of removal from office was a subject much disputed, and upon which a great diversity of opinion was entertained in the early history of the Government. This related, however, to the power of the President to remove officers appointed with the concurrence of the Senate, and the great question was whether the removal was to be by the President alone or with the concurrence of the Senate, both constituting the appointing power. No one denied the power of the President and Senate jointly to remove where the tenure of the office was not fixed by the Constitution, which was a full recognition of the principle that the power of removal was incident to the power of appointment; but it was very early adopted as a practical construction of the Constitution that this power was vested in the President alone, and such would appear to have been the legislative construction of the Constitution, for in the organization of the three great Departments of State, War, and Treasury, in 1789, provision was made for the appointment of a subordinate officer by the head of the department, who should have charge of the records, books, and papers appertaining to the office when the head of the department should be removed from office by the President of the United States. When the Navy Department was established, in the year 1798, provision was made for the charge and custody of the books, records, and documents of the Department in case of vacancy in the office of Secretary, by removal or otherwise. It is not here said 'by removal of the President,' as it is done with respect to the heads of the other departments; yet there can be no doubt that he holds his office with the same tenure as the other Secretaries, and is removable by the President. The change of phraseology arose probably from its having become the settled and well-understood construction of the Constitution that the power of removal was vested in the President alone in such cases, although the appointment of the officer is by the President and Senate." (13th Peters, page 139.)

Our most distinguished and accepted commentators upon the Constitution concur in the construction thus early given by Congress, and thus sanctioned by the Supreme Court. After a full analysis of the Congressional debate to which I have referred, Mr. Justice Story comes to this conclusion:

"After a most animated discussion, the vote finally taken in the House of Representatives was affirmative of the power of removal in the President without any co-operation of the Senate, by the vote of 34 members against 20. In the Senate the clause in the bill affirming the power was carried by the casting vote of the Vice-President. That the final decision of this question so made was greatly influenced by the exalted character of the President then in office was asserted at the time, and has always been believed: yet the doctrine was opposed as well as supported by the highest talent and patriotism of the country. The public have acquiesced in this decision, and it constitutes perhaps the most extraordinary case in the history of the Government of a power conferred by implication on the Executive by the assent of a bare majority of Congress which has not been questioned on many other occasions."

The commentator adds: "nor is this general acquiescence and silence without a satisfactory explanation."

Chancellor Kent's remarks on the subject are as follows:

"On the first organization of the Government it was made a question whether the power of removal in case of officers appointed to hold at pleasure resided nowhere but in the body which appointed," and of course whether the consent of the Senate was not requisite to remove. This was the construction given to the Constitution while it was pending for ratification before the State conventions, by the author of the Federalist. But the construction which was given to the Constitution by Congress after great consideration and discussion was different. The words of the act (establishing the Treasury department) are, "and whenever the same shall be removed from office by the President of the United States, or in any other case of vacancy in the office, the assistant shall act." This amounted to a legislative construction of the Constitution, and it has ever since been acquiesced in and acted upon as a decisive authority in the case.

It applies equally to every other officer of the Government appointed by the President whose term of duration is not specially declared. It is supported by the weighty reason that the subordinate officers in the executive department ought to hold at the pleasure of the head of the department, because he is invested generally with the executive authortity, and the participation in that authority by the Senate was an exception to a general principle, and ought to be taken strictly. The President is the great responsible officer for the execution of the law, and the power of removal was incidental to that duty and might often be requisite to fulfill it. Thus has the important question presented by this bill been settled, in the language of the late Daniel Webster, (who, while dissenting from it, admitted that it was settled,) by construction, settled by the practice of the Government, and settled by statute. The events of the last war furnished a practical confirmation of the wisdom of the Constitution as it has hitherto been maintained in many of its parts, including that which is now the subject of consideration. When the war broke out, rebel enemies, traitors, abettors, and sympathisers were found in every department of the Government, as well in the civil service as in the land and naval military service. They were found in Congress and among the keepers of the Capitol, in foreign missions, in each and all of the executive departments, in the judical service, in the Post Office, and among the agents for conducting Indian affairs, and upon probable suspicion they were promptly displaced by my predecessor, so far as they held their offices under Executive authority, and their duties were confided to new and loyal successors. No complaints against that power or doubts of its wisdom were entertained in any quarter. I sincerely trust and believe that no such civil war is likely to occur again. I cannot doubt, however, that in whatever form and on whatever occasion sedition can rise, an effort to hinder or embarrass or defeat the legitimate action of this Government, whether by preventing the collection of revenue, or disturbing the public peace, or separating the States, or betraying the country to a foreign enemy, the power of removal from office by the Executive, as it has heretofore existed and been practised, will be found indispensable. Under these circumstances, as a depository of the executive authority of the nation, I do not feel at liberty to unite with Congress in reversing it by giving my approval of the bill.

At the early day when the question was settled, and indeed at the several periods when it has subsequently been agitated, the success of the Constitution of the United States as a new and peculiar system of free representative government was held doubtful in other countries, and was even a subject of patriotic apprehension among the American people themselves. A trial of nearly eighty years, through the vicissitudes of foreign conflicts and of civil war, is confidently regarded as having extinguished all such doubts and apprehensions for the future. During that eighty years the people of the United States have enjoyed a measure of security, peace, prosperity, and happiness never surpassed by any nation. It cannot be doubted that the triumphant success of the Constitution is due to the wonderful wisdom with which the functions of government were distributed between the three principal departments—the legislative, the executive, and the judicial—and to the fidelity with which each has confined itself or been confined by the general voice of the nation within its peculiar and proper sphere.

While a just, proper, and watchful jealousy of executive power constantly prevails, as it ought ever to prevail, yet it is equally true that an efficient Executive, capable, in the language of the oath prescribed to the President, of executing the laws within the sphere of executive action, of preserving, protecting, and defending the Constitution of the United States, is an indispensable security for tranquillity at home, and peace, honor, and safety abroad. Governments have been erected in many countries upon our model. If one or many of them have thus far failed in fully securing to their people the benefits which we have derived from our system, it may be confidently asserted that their misfortune has resulted from their unfortunate failure to maintain the integrity of each of the three great departments while preserving harmony amongst them all.

Having at an early period accepted the Constitution in regard to the Executive office in the sense in which it was interpreted with the concurrence of its founders, I have found no sufficient grounds in the arguments now opposed to that construction or in any assumed necessity of the times for changing those opinions. For these reasons I return the bill to the Senate, in which house it originated, for the further consideration of Congress, which the Constitution prescribes. Insomuch as the several parts of the bill which I have not considered are matters chiefly of detail, and are based altogether upon the theory of the Constitution from which I am obliged to dissent, I have not thought it necessary to examine them with a view to make them an occasion of distinct and special objections. Experience, I think, has shown that it is the easiest, as it is also the most attractive, of studies to frame constitutions for the self-government of free States and nations.

But I think experience has equally shown that it is the most difficult of all political labors to preserve and maintain such free constitutions of self-government when once happily established. I know no other way in which they can be preserved and maintained except by a constant adherence to them through the various vicissitudes of national existence, with such adaptations as may become necessary, always to be effected, however, through the agencies and in the forms prescribed in the original constitutions themselves. Whenever administration fails or seems to fail in securing any of the great ends for which republican government is established, the proper course seems to be to renew the original spirit and forms of the Constitution itself.

ANDREW JOHNSON.

WASHINGTON, March 2, 1867.